

IN RE THE MEETING OF THE)

BAY-DELTA ADVISORY COUNCIL)

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ORIGINAL

TRANSCRIPT OF PROCEEDINGS

Sterling Hotel

1300 H Street

Sacramento, California

Thursday, April 13, 2000 at 9:39 a.m.

Reported by:
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1 COUNCIL MEMBERS:

2 MIKE MADIGAN, Chairman

3 SUNNE McPEAK, Vice Chair

4 STEVE RITCHIE, Executive Director

5 SUSAN RAMOS, U.S. Bureau of Reclamation

6 GENE ANDREUCCETTI, California Waterfowl

7 Association

8 TIB BELZA, Northern California Water

9 Association

10 ROBERTA BORGONOVO, League of Women Voters of

11 California

12 BYRON BUCK, California Urban Water Agencies

13 HARRISON (HAP) DUNNING, The Bay Institute

14 TORRI ESTRADA, The Urban Habitat Program

15 HOWARD FRICK, Friant Water Authority/Arvin

16 Edison Water District

17 MARTHA GUZMAN, United Farm Workers of

18 America, ASL-CIO

19 ERIC HASSELTINE, Contra Costa Council

20 ALEX HILDEBRAND, South Delta Water Agency

21 RICHARD IZMIRIAN, California Sportfishing

22 Protection Alliance

23 BOB RAAB, Save San Francisco Bay Association

24 JUDITH REDMOND, Community Alliance with

25 Family Farmers

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1 COUNCIL MEMBERS: (Cont'd)

2 STUART PYLE, Kern County Water Agency

3 MIKE SHAVER, Big Valley Band of Pomo Indians

4 BRENDA JAHNS-SOUTHWICK, California Farm

5 Bureau Federation

6 FRANCES SPIVY-WEBER, Mono Lake Committee

7 MIKE STEARNS, San Luis Delta Mendota Water

8 Agency

9 ANN NOTTHOFF, Natural Resources Defense

10 Council

11 STEPHEN ZAPOTICZNY, Monsanto Corp./Southern

12 California Water Committee

13 MARCIA SABLON, City of Firebaugh

14 ROSEMARY KAMEI, Santa Clara Valley Water District

15 TOM GRAFF, Environmental Defense Fund

16 ROGER FONTES, Northern California Power Agency

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1 (All parties present, the following proceedings were had
2 at 9:39 a.m.)

3 CHAIRMAN MADIGAN: Good morning. The hour of
4 9:30 having arrived and passed safely enough that
5 everybody's clock now at least reflects that moment,
6 we're going to go ahead and get started. This is the
7 meeting of the Bay-Delta Advisory Council for April
8 13th, 2000. And it's -- and we are underway. And our
9 federal representative is here, so we have an
10 official -- we have an official meeting. Let me find my
11 notes here, because there are some announcements that I
12 want to make at the beginning of the meeting. What did
13 I do with them?

14 Lester Snow has had a death in the family, as I
15 suspect some of you have heard. He is not here today.
16 Susan Ramos from the Bureau of Reclamation is here in
17 Lester's stead as our federal representative.
18 Steve Macauley is our state representative, and indeed
19 he is here and prepared, even with an umbrella, which
20 should be worrisome to all of us from out of town who
21 didn't bring one.

22 I have signed letters this morning. Thank you.
23 I'll need -- don't go too far with that by the end of
24 this day. I have made some appointments to the
25 Ecosystem Roundtable, and I will -- and they are

1 Laurel Ames from the Sierra Nevada Alliance,
2 Terry Erlewine from the State Water Contractors,
3 Kevin Smith as an alternate from the Northern California
4 Power Agency, and Tim Ramirez from the Resource Agency.

5 The next BDAC meeting, if indeed we have a next
6 BDAC meeting, is at least at this moment scheduled for
7 June 1st, and it would be here in Sacramento. That
8 meeting may be changed, modified, or not held depending
9 on the outcome of today's proceedings.

10 All right. Let's move on to the Executive
11 Director's report. Mr. Ritchie.

12 EXECUTIVE DIRECTOR RITCHIE: Thanks, Mike.
13 There's a written Executive Director's report in the
14 package for the BDAC members. I wanted to highlight a
15 couple of things out of that and make mention of a
16 couple of things. First, the project solicitation
17 proposal for ecosystem restoration projects for federal
18 fiscal year 2001 has been distributed. I believe there
19 was a workshop yesterday on the package for potential
20 proponents of projects. So that process is in the
21 works. I believe proposals are due in the middle of May
22 of this year. I guess one important thing to note is
23 that process is now finally getting ahead of the funding
24 cycle so that if and when funds become available,
25 projects will already be teed up for funding under that

<p>1 process.</p> <p>2 Secondly, it's actually -- I believe that the</p> <p>3 vote on Proposition 13 was between this and the last</p> <p>4 BDAC meeting. Just to refresh folks, that Prop 13 did</p> <p>5 pass quite handily, and that it includes 250 million</p> <p>6 dollars of funding for CALFED projects that relate to</p> <p>7 Bay-Delta water management, but even another 410 million</p> <p>8 dollars of things that are very much related to CALFED,</p> <p>9 such as ground water management, water use efficiency,</p> <p>10 and other things. So on the state side of the house,</p> <p>11 they're working now on processes to be put in place to</p> <p>12 move those funds out into projects in the future.</p> <p>13 The last thing I want to mention here is that</p> <p>14 there's also a letter attached that has finally released</p> <p>15 the -- other than ecosystem type funding, as you recall,</p> <p>16 this federal fiscal year's funding with 60 million</p> <p>17 dollars, 30 million dollars for ecosystem restoration</p> <p>18 and 30 million dollars for other activities in the</p> <p>19 CALFED program. So we finally got out of Interior a</p> <p>20 document releasing the use of that for the projects that</p> <p>21 are described therein. And I believe we presented those</p> <p>22 to BDAC actually several months ago. It's taken a while</p> <p>23 to get that letter out, but those things should start to</p> <p>24 move right now.</p> <p>25 CHAIRMAN MADIGAN: Roger.</p> <p style="text-align: right;">Page 6</p>	<p>1 EXECUTIVE DIRECTOR RITCHIE: And those were all</p> <p>2 the points that I wanted to mention.</p> <p>3 CHAIRMAN MADIGAN: Any other questions? Yeah,</p> <p>4 Ann.</p> <p>5 MS. NOTTHOFF: I just have a further question</p> <p>6 about Prop 13, and that is the Department is developing</p> <p>7 criteria and lists of projects. Could we get those</p> <p>8 earlier, rather than later, and be kept informed of what</p> <p>9 you are thinking about the early projects getting out</p> <p>10 the door?</p> <p>11 MR. MACAULEY: Certainly. We would be glad to.</p> <p>12 MS. NOTTHOFF: Thank you.</p> <p>13 CHAIRMAN MADIGAN: Anybody else? Tom.</p> <p>14 MR. GRAFF: A few questions, Steve. One is</p> <p>15 whether there's going to be any kind of formal roll out</p> <p>16 of the decisions or -- or sort of, you know, possible</p> <p>17 actions coming out of this group? And then, secondly,</p> <p>18 is the timing you mentioned in your written report that</p> <p>19 there were two more meetings scheduled between now and</p> <p>20 the end of April, but nothing beyond that as to whether</p> <p>21 they were going to continue to meet or when decisions</p> <p>22 would actually emerge.</p> <p>23 EXECUTIVE DIRECTOR RITCHIE: Yeah. Relative to</p> <p>24 the state/federal discussions which are going on with,</p> <p>25 you know, high level folks from both the state and the</p> <p style="text-align: right;">Page 8</p>
<p>1 MR. FONTES: Steve, I had a quick question on</p> <p>2 the Prop 13 money.</p> <p>3 EXECUTIVE DIRECTOR RITCHIE: Yes.</p> <p>4 MR. FONTES: We heard in the Governor's office</p> <p>5 a couple of weeks ago that maybe the State Treasurer</p> <p>6 would be delaying issuance of the bonds to obtain the</p> <p>7 money for some of the state programs just based on</p> <p>8 financial conditions and interest rates. And I just</p> <p>9 wondered if --</p> <p>10 EXECUTIVE DIRECTOR RITCHIE: Yeah, I'm unaware</p> <p>11 of that. Steve Macauley may have some information on</p> <p>12 that.</p> <p>13 MR. MACAULEY: No, I don't.</p> <p>14 EXECUTIVE DIRECTOR RITCHIE: I'm unaware of any</p> <p>15 delay of that sort. I think one issue that is out there</p> <p>16 is, in some of the funding cases, there is discussion</p> <p>17 going on as to whether or not regulations need to be</p> <p>18 developed to release those funds, and have a process in</p> <p>19 place for administering those funds.</p> <p>20 MR. MACAULEY: I would like to add that there</p> <p>21 are -- I think there are very strong incentives from the</p> <p>22 Governor's office to start getting money out the door.</p> <p>23 So I think there's -- we get very positive messages</p> <p>24 every day saying, well, can you write a check so --</p> <p>25 CHAIRMAN MADIGAN: Right. Okay.</p> <p style="text-align: right;">Page 7</p>	<p>1 federal governments, from my point of view, from CAL and</p> <p>2 FED, those -- we had a meeting earlier this week, there</p> <p>3 are some meetings scheduled in the last week of April.</p> <p>4 We have been going through a lot of the program and a</p> <p>5 variety of issues. I think there are hard decisions</p> <p>6 ahead for them to see what they really want to support</p> <p>7 and how that ties in, I think, ultimately to the state</p> <p>8 budget. I think we're working on anticipation of being</p> <p>9 able to have a release in June sometime of a package of</p> <p>10 stuff. My expectation would be, as those discussions</p> <p>11 come to fruition, and I'm hopeful they will come to a</p> <p>12 positive fruition, I think there's still, you know, some</p> <p>13 tension on a variety of issues, that during the month of</p> <p>14 May that there will be a lot of discussions with other</p> <p>15 folks about where those are headed and how it's coming</p> <p>16 together. But I think, ultimately, we're looking</p> <p>17 towards a release of the final EIS/EIR during the month</p> <p>18 of June, and at that time, following up with a lot of</p> <p>19 details which really are on implementation of the CALFED</p> <p>20 program. And that's really the focus of the discussions</p> <p>21 is implementation. It's not as much on the programmatic</p> <p>22 decision as on, okay, what are you going to do next. I</p> <p>23 think that's the real focal point. I don't know if</p> <p>24 Steve or Susan want to add anything on the state/federal</p> <p>25 discussions.</p> <p style="text-align: right;">Page 9</p>

<p>1 CHAIRMAN MADIGAN: Okay. Other questions of 2 the Executive Director? All right. Then we'll move on 3 to the next item on the agenda, number three, which is 4 the preferred program alternative implementation. And 5 let me -- let me start this conversation off. You will 6 recall last time some considerable discussion about our 7 role in this enterprise, especially given the 8 negotiations that are currently taking place, the 9 conversations at the policy group and other -- and other 10 conversations and negotiations that are out there that 11 each of you knows from your own experience probably more 12 than any of the rest of us about certain aspects of 13 that. It seems to me that this is the next great 14 opportunity for this now however many year old process 15 we have been going through to come at the level of 16 CALFED to a series of decisions. And I'm -- it is not 17 uncoincidentally tied to election cycles. That's okay. 18 That's simply the way the public process is. 19 To that end, Sunne and I asked each of you to 20 look at the preferred alternative, and to look at a 21 draft document that we had prepared, to give us your 22 comments, your thoughts, your suggestions and 23 corrections. And then there was an attempt, because a 24 number of you did respond, and hopefully, each of you 25 have received copies of all of that, all of the</p> <p style="text-align: right;">Page 10</p>	<p>1 making changes in the document, and that we have then a 2 handful of perhaps remaining issues which one or another 3 interest group still is not comfortable with, and we 4 report that out to the policy group. 5 The least desirable of the options it seems to 6 me today, but still one that I personally can live with, 7 is that Sunne and I go forward with this document, or 8 some variation of this document, as simply being from 9 the two of us to the policy group and to the negotiators 10 as our best recommendation, not only of where we are 11 personally is the -- as the cochairs of this enterprise, 12 but also our belief in terms of the responses that we 13 got as being reflective of something that could be 14 consensus given that there is an awful lot of dynamic 15 out here where people are -- have still retreated to 16 your individual corners with your individual groups in 17 preparation for your own participation and negotiations 18 in this end game that's going on. All of that is 19 perfectly understandable within the -- you know, within 20 the operations of the democracy in which we -- in which 21 we live and presumably function. 22 So what I would like to get today is your 23 comments on that document, see if we can find consensus. 24 If we can't, see if we can define clearly, with 25 specificity, the areas of disagreement so that the</p> <p style="text-align: right;">Page 12</p>
<p>1 responses, and we obviously thank you very much for the 2 time and the effort that you put into that. We then 3 tried, with the staff, with Steve, with Eugenia, to 4 summarize that information and come to what seemed to us 5 to be a representative's sort of middle ground position 6 that did several things, not least of which was that it 7 was a position that Sunne and I could personally be 8 comfortable with as -- as advice to CALFED and to the 9 negotiators as to where all the experience gained by all 10 of us sitting around this table and other tables for all 11 of this time, listening to all of these reports and the 12 results of all of the studies that took place 13 actually -- actually educating us, and that's the point 14 that we got to. That document then has been distributed 15 to you. 16 It is my hope today, because the intention of 17 that document is to be as specific at least as possible, 18 that you will respond to that document. Now, the best 19 possible outcome of today would be that we would have a 20 document that, in fact, everybody agreed to at the end 21 of the day. I don't hold out any particular hopes for 22 that. I don't suspect any of you do. The next best 23 possible outcome of the day is that that document that 24 Sunne and I have put forward receives comments that, 25 one, she and I feel comfortable with with taking and</p> <p style="text-align: right;">Page 11</p>	<p>1 document, whatever that document is, that will in fact 2 go forward from at least Sunne and me is as reflective 3 as possible of the input of this group. 4 Sunne? 5 VICE CHAIR McPEAK: Mr. Chairman, I think you 6 said that very eloquently. And I would only like to, I 7 guess, start by thanking everyone who took the time to 8 review and to comment. There were over 70 pages of 9 comments and recommendations, suggestions. And that in 10 and of itself was a very productive process to help 11 educate us and others, since that's all a part of the 12 public record. I also want to just remind everybody 13 that Chairman Madigan and I did not take this upon 14 ourselves independent of BDAC. We were directed to do 15 so at the last meeting, or at least to try to facilitate 16 this process. And that, too, was reflective of an 17 exercise in democracy, as messy as it might be from time 18 to time. And so the spirit with which we went forward 19 was working on the thoughts that had been advanced at 20 the last BDAC meeting, and what Alex had introduced as a 21 working approach on a preamble, and then to gather all 22 of your comments. 23 It probably is worth noting and/or underscoring 24 what Mike has said, the amount of work that the staff 25 has put into this. So Steve and Eugenia, in particular,</p> <p style="text-align: right;">Page 13</p>

1 who has done yeoman's duty, we too read through every
2 document at least once, I think twice. It took me three
3 times to understand some of it and to do a best attempt
4 at putting forward a recommendation that would invite
5 your comments. And invite, I think, indeed we have
6 since this is the best attendance of BDAC since it was
7 formed.
8 CHAIRMAN MADIGAN: Absolutely.
9 VICE CHAIR McPEAK: So, you know, this is an
10 extraordinarily important meeting, because it's on the
11 public record. And part of what I want to encourage is,
12 in fact, comments that get on the public record. All of
13 the recommendations are a part of that record. And now
14 to hear those comments also be a part of the public
15 process is helpful, in my personal opinion, but also
16 recognizing the realities of how negotiations happen,
17 the various parties that are having dialogue. We have
18 heard from many of them, and not one has commented that
19 they wish we wouldn't advise them at this point. In
20 fact, I think those who are participating in that
21 process would welcome the kinds of comments we expect to
22 get today and the direction of the proposed
23 recommendation that we have put before you.
24 So just to, I guess, summarize, I hope we will
25 get that kind of comment around the table. I would like

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1 to underscore that what is recommended is a statement
2 that says the preferred alternative as it has been
3 written is not yet acceptable. It is a basis that has a
4 foundation to begin with, and needs to have a lot more
5 substance added to it. And that's what, in fact, the
6 comments that we received said and what we propose to
7 you. And that, in and of itself, is a very substantive
8 piece of commentary or advice from this group to the
9 CALFED policy group to the agencies engaged in
10 negotiations between the state and federal government.
11 So with that, I can't wait to hear your
12 comments.
13 CHAIRMAN MADIGAN: And maybe the way to start
14 this off, Eugenia has prepared some overheads, in the
15 finest traditions of the BDAC process, to outline some
16 of the bullet points here. And we could go through
17 those, Eugenia. And then we'll see if we can't make
18 some cogent notes out of this on the -- on the board up
19 there to try to see if we can get some language that
20 people would agree to, to help us move it forward. We
21 want this to be as explicit as it can possibly be today.
22 Yeah. Sorry about placement, as usual. Yeah.
23 Bearing in mind that the chart particularly, and I'm
24 happy for everybody in the audience to be able to see
25 it, too, but I really want the members of BDAC to be

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1 able to read that here, because those would be comments
2 that we're going to try to incorporate into what goes
3 on.
4 Okay. Yeah, Steve. Sure.
5 MR. HALL: Question on the process. Is it your
6 intent then to sort of line by line edit this, or --
7 CHAIRMAN MADIGAN: No.
8 MR. HALL: -- how do you --
9 CHAIRMAN MADIGAN: No. It's -- if there is a
10 word in there that is greatly troubling to somebody, by
11 all means, say the word. But, really, the intention
12 here is to gain substance. I mean, we can -- you know,
13 we can take a little while and wordsmith this, and the
14 staff is really good at that, and everybody is going to
15 listen really carefully. But I would rather not edit
16 the document here in terms of a specific word unless
17 that word is a word of real substance. Because what I'm
18 looking for today is a -- is what we can tell the policy
19 group and the negotiators from all these years of
20 sitting around here and becoming educated.
21 MR. HALL: So your plan is to have a complete,
22 you know, a thorough discussion of the document --
23 CHAIRMAN MADIGAN: Yes.
24 MR. HALL: -- as sort of page by page, write it
25 all down in the form of notes, and then what?

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1 CHAIRMAN MADIGAN: And then we will take that
2 information and see if we can come up with a meaningful
3 document recognizing that it -- that, at a minimum, that
4 document is going to come from the two of us. If it
5 seems like there is actually significant hope at the end
6 of day that we have some sort of consensus beginning to
7 occur here, terrific. Then we will take the time to do
8 that and it -- and, you know, and get back to everybody
9 and say is this an accurate reflection of, you know,
10 what you said and all that sort of stuff.
11 If, as I presume we're -- and it's just an
12 operating assumption here, I could be wrong, we're not
13 going to find consensus on a document today, then we'll
14 try -- we will simply try to reflect those places where
15 there is a lack of agreement. We will also, by the end
16 of today, try to get a sense of who is going to come to
17 the next policy group meeting, both in terms of the
18 people who will be sitting there from BDAC and in terms
19 of people who want to show up and say something.
20 But Sunne said it, and it is true, that we
21 have, in fact, had conversation with the principals in
22 the negotiations and they do, in fact, encourage this
23 undertaking today and want the results of that
24 undertaking. So there will be a document that comes out
25 of this.

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5 (Pages 14 to 17)

<p>1 Where did Eugenia go? Sure. Hap. 2 MR. DUNNING: In terms of the process, Mike, I 3 suppose there's nothing objectionable from my point of 4 view if, in the end, it's necessary for you and Sunne 5 just to express your own individual views on the 6 substance of these issues. I'm a little concerned 7 though if you are making judgments as to what there is 8 and what there is not consensus on without letting us 9 have a chance to indicate whether we agree and whether 10 some item would be called a consensus item by you -- 11 CHAIRMAN MADIGAN: Right. 12 MR. DUNNING: -- when we, in fact, -- 13 CHAIRMAN MADIGAN: Right. 14 MR. DUNNING: -- think it's not one. 15 CHAIRMAN MADIGAN: Absolutely. I understand 16 that. Sunne. 17 VICE CHAIR McPEAK: In fact, exactly the 18 opposite, Hap. I think what we're trying to say is the 19 record that gets created by your comments is the record 20 also to be reported. 21 MR. DUNNING: Okay. 22 VICE CHAIR McPEAK: Okay? 23 CHAIRMAN MADIGAN: That's the point. 24 VICE CHAIR McPEAK: So if you choose to talk, 25 it's going to get reported.</p> <p style="text-align: right;">Page 18</p>	<p>1 these three. And that's why, Hap. It was the concept 2 of continuous improvement, but getting healthy or better 3 together, whatever that term was, that specifically said 4 ecosystem, water supply reliability, water quality. 5 That's why. 6 MR. DUNNING: Thank you. 7 CHAIRMAN MADIGAN: Okay. Steve. 8 MR. HALL: I do appreciate your optimism, both 9 of you. And maybe it's better hope than optimism, 10 because you issued the disclaimer, Mike. But we may 11 want to flag to come back to later the fact that the 12 title is BDAC draft recommendations, implying that the 13 Council is going to make these recommendations. 14 CHAIRMAN MADIGAN: Yep. 15 MR. HALL: And then in at least two places that 16 I can see, it refers to the Council acknowledging or 17 believing something. Now, in the end -- at the end of 18 the day, we may all acknowledge and believe it together. 19 CHAIRMAN MADIGAN: That's right. 20 MR. HALL: But we probably ought to flag it now 21 and -- just in case we don't. 22 CHAIRMAN MADIGAN: Fair point. Correct. Okay. 23 So is anybody -- does anybody find, at this exact 24 moment, a difficulty with this recommendation that would 25 make it less than a BDAC recommendation?</p> <p style="text-align: right;">Page 20</p>
<p>1 MR. DUNNING: We'll talk. We'll talk. 2 CHAIRMAN MADIGAN: If you choose -- and indeed 3 if you choose not to, there -- then your feelings on the 4 matter are open to interpretation by the people on the 5 policy group. 6 MR. DUNNING: Okay. I also have a small 7 substance point on what's up on the -- 8 CHAIRMAN MADIGAN: Sure. Go. 9 MR. DUNNING: I'm just curious why at the end 10 the reference is to only three of our four problem 11 areas. 12 CHAIRMAN MADIGAN: Does that mean levees? 13 MR. DUNNING: Levees are left out. I just 14 wondered if there's some reason for that. 15 VICE CHAIR McPEAK: In terms of the -- I 16 personally would be happy to add levees. I love levees. 17 But the reason that those three are referenced is, a 18 year ago, December of '98, those negotiations that got 19 us to the phase two report talked about the concept of 20 making investments to ensure continuous improvement in 21 these three. These three were actually outlined as the 22 outcomes. You have to make an investment in levees or 23 strengthen levees and do habitat with levees in order to 24 get to all three of these. So, in a sense, levees is 25 almost a non sequitur when we talk about the context of</p> <p style="text-align: right;">Page 19</p>	<p>1 Bob? 2 MR. RAAB: There are some things in the 3 preferred alternative that call for changes, and I don't 4 see that word there. When you say -- 5 VICE CHAIR McPEAK: The word modified is meant 6 to be change. So the -- I jumped in, Bob. I just 7 wanted to -- 8 MR. RAAB: Yeah. 9 VICE CHAIR McPEAK: -- explain. But I think 10 your comment about the change would be important. 11 MR. HASSELTINE: This is only the first 12 paragraph. 13 VICE CHAIR McPEAK: It's only the first 14 paragraph. We have a lot to do. I don't -- you know, 15 the word -- I didn't even try to wordsmith the word 16 believe. Anybody who has ever heard me edit a document 17 knows I believe in God, family, and country. I think we 18 think here, and I would have preferred that word be 19 think. But I let it go. You know, we think in 20 business. There's a lot of things I believe in. And 21 the word modify is meant to be change. 22 MR. RAAB: But if you had more action in stage 23 one, comma, some changes, comma, and greater 24 specificity, to me, that would cover my concern. 25 VICE CHAIR McPEAK: Okay.</p> <p style="text-align: right;">Page 21</p>

<p>1 CHAIRMAN MADIGAN: Okay. Thank you. Steve. 2 MR. HALL: Let me just go back. 3 CHAIRMAN MADIGAN: Sure. 4 MR. HALL: We may all agree on the first 5 paragraph. But implicit in an opening paragraph where 6 you say the Council acknowledges and believes certain 7 things, that from there on, a reader might reasonably 8 conclude that the Council therefore is saying all these 9 other things that fall within the document, if you take 10 my meaning. 11 CHAIRMAN MADIGAN: Okay. We can say -- 12 MR. HALL: So that's why I wanted to flag it. 13 We may, at the end of the day, be all fine with doing 14 it. 15 CHAIRMAN MADIGAN: Yes. Okay. All right. 16 Okay. I got you. Mike. 17 MR. SHAVER: On the lines of what was commented 18 on the change, I think in reference to our -- was it 19 adaptive management as we discussed? That might be 20 beneficial and it might encompass some of the concerns 21 as things occur in the future, we change for that. And 22 then on the first sentence, at the end of the sentence, 23 over the next 20 to 30 years, -- 24 CHAIRMAN MADIGAN: Yeah. 25 MR. SHAVER: -- I know we have time frames, but</p> <p style="text-align: right;">Page 22</p>	<p>1 go on to the next overhead. Anybody? 2 VICE CHAIR McPEAK: The same comment holds. I 3 know that that may not be -- 4 CHAIRMAN MADIGAN: Yeah. 5 VICE CHAIR McPEAK: -- the Council when we 6 get -- at the end of the day. 7 CHAIRMAN MADIGAN: Yes. All right. Let's move 8 on then. Let's start going through the bullet points. 9 It's painful, isn't it, Steve? This is very, very 10 difficult. 11 Hap. 12 MR. DUNNING: The first bullet, I want to make 13 a comment on the first bullet, one of the ideas that's 14 been discussed for a long time is the possibility of 15 having user fees, for example, user fees to finance 16 ecosystem restoration activity. One possibility for 17 setting up user fees would be to do it in a way that 18 does not involve the money going through the annual 19 appropriations process. The second sentence in the 20 first bullet seems to preclude that unnecessarily. I 21 don't really see why that needs to be there. I think 22 it's unduly restrictive. So my suggestion would be 23 simply to delete that second sentence in the first 24 bullet. 25 CHAIRMAN MADIGAN: Yeah. Go ahead.</p> <p style="text-align: right;">Page 24</p>
<p>1 I don't know if a time frame should be included in the 2 preamble. I think the goals would be carried on forth 3 out after the program. 4 CHAIRMAN MADIGAN: Comment anybody? 5 VICE CHAIR McPEAK: Well, I think -- I think 6 it's a good comment. And I guess the process that 7 I'm -- I think we're pursuing, let me check this with 8 you, is that what is before us is definitely a group 9 effort. I mean, you know, it was trying to keep the 10 integrity of a lot of stuff that was put on the table 11 and no one person wrote it. So what we want to -- we 12 will be capturing is, Mike, what you just said, and 13 adding that to the record to share with the policy 14 group. And we'll see, at the end of the day, does 15 anyone want us to also try to reintegrate those words, 16 just like Bob had the edits there. 17 MR. SHAVER: I have no problem with reference 18 to the time frame. It was just a comment on the context 19 of it. 20 CHAIRMAN MADIGAN: Yeah. There has been a 21 general assumption around here that we were operating 22 within that sort of time frame. And I don't know that 23 there's much more to it than that. 24 All right. That's not bad. Let's move onto 25 the -- you know, you never know. What the hell. Let's</p> <p style="text-align: right;">Page 23</p>	<p>1 VICE CHAIR McPEAK: And that comment is getting 2 recorded, too. In response, I don't -- didn't quite 3 understand either when I first saw all these comments. 4 I have to take one and two together. I think the 5 formula on contributions from all beneficiaries does 6 allow for the user fee concept without us, you know, 7 debating that in what amounts or exactly. 8 MR. DUNNING: Right. 9 VICE CHAIR McPEAK: I gathered finally after 10 probing that second sentence that that's really an 11 acknowledgment of what the government agencies would 12 want to have stipulated to. 13 MR. DUNNING: Well, there are existing 14 programs, aren't there, that are independent of the 15 appropriations process? 16 VICE CHAIR McPEAK: Not many. 17 MR. DUNNING: Maybe not many, but am I wrong in 18 thinking that they exist? 19 VICE CHAIR McPEAK: But just that portion that 20 would have -- I mean, I actually don't know of a 21 government process, except when you get a full funding 22 agreement. That still can be -- you know, jerked back 23 under certain conditions. Anyway, that's what I 24 understood, Hap, just to respond. Because I was puzzled 25 by it as well. Does anybody want to --</p> <p style="text-align: right;">Page 25</p>

<p>1 CHAIRMAN MADIGAN: Anybody? Byron.</p> <p>2 MR. BUCK: I tend to agree with Hap for</p> <p>3 different reasons. I think the statement is kind of</p> <p>4 contradictory in the sense that we want assured funding</p> <p>5 for all elements, yet we're clearly stating you can't --</p> <p>6 you shouldn't be exempt from annual appropriations. It</p> <p>7 tends to work at cross purposes. I'm not -- that is</p> <p>8 probably the political reality. I don't know that we</p> <p>9 need to state it. And I think the fundamental belief of</p> <p>10 all of us is we've got to have all the elements funded</p> <p>11 and it's got to be secure enough that people are willing</p> <p>12 to go with the deal. And I would support just having</p> <p>13 the first half, first phrase.</p> <p>14 CHAIRMAN MADIGAN: All right. I think that's a</p> <p>15 fair point. I think both Sunne and I understand that</p> <p>16 that could be taken out of here. That's the second</p> <p>17 sentence.</p> <p>18 I'm sorry. Brenda.</p> <p>19 MS. JAHNS-SOUTHWICK: Thank you. Can you hear</p> <p>20 me?</p> <p>21 CHAIRMAN MADIGAN: Yeah.</p> <p>22 MS. JAHNS-SOUTHWICK: Okay. First, I want to</p> <p>23 say that I commend the effort that you and Sunne have</p> <p>24 made to try to pull together from all the 70 pages of</p> <p>25 comments something that could at least be discussed and</p> <p style="text-align: right;">Page 26</p>	<p>1 the nature of the concerns we would have --</p> <p>2 CHAIRMAN MADIGAN: Okay.</p> <p>3 MS. JAHNS-SOUTHWICK: -- with any proposed</p> <p>4 motion that may come up today.</p> <p>5 CHAIRMAN MADIGAN: Thank you. All right.</p> <p>6 Steve.</p> <p>7 MR. HALL: I agree with Brenda. Just a</p> <p>8 practical suggestion, one way to help assure, it doesn't</p> <p>9 provide complete assurance, but help assure funding</p> <p>10 while keeping the annual appropriations process is to</p> <p>11 create a political incentive for all the parties by</p> <p>12 packaging things so that there is balanced funding. And</p> <p>13 so if you want to kill somebody else's project, you're</p> <p>14 killing your own. And that's one way to get around</p> <p>15 that.</p> <p>16 Having been constructive for a moment, let me</p> <p>17 revert. I need to go back to the prior overhead.</p> <p>18 CHAIRMAN MADIGAN: Can we go back to the prior</p> <p>19 overhead for a moment, please?</p> <p>20 MR. HALL: Because there is a big problem with</p> <p>21 it that I didn't want to talk about, but got to talk</p> <p>22 about.</p> <p>23 I'm no lawyer, nor any NEPA/CEQA expert, but I</p> <p>24 am told that there are questions of legal sufficiency</p> <p>25 with respect to the document, just from the standpoint</p> <p style="text-align: right;">Page 28</p>
<p>1 contribute to moving forward somehow, hopefully, in the</p> <p>2 context of contributing to negotiations between</p> <p>3 Governor Davis and Secretary Babbitt.</p> <p>4 The concern I have is on specific language in</p> <p>5 any of these bullets, there are going to be places where</p> <p>6 we certainly are not going to agree with everyone else.</p> <p>7 And one of those particular areas has just come up,</p> <p>8 which is, you know, funding exemption from annual</p> <p>9 appropriations process, just as an example.</p> <p>10 We have repeatedly made our views known in</p> <p>11 great detail on what we think are the flaws in the</p> <p>12 CALFED program and, specifically, in the environmental</p> <p>13 documentation. And one of the concerns we have</p> <p>14 consistently raised is accountability. And one way to</p> <p>15 encourage accountability, certainly, is to have an</p> <p>16 annual appropriations process.</p> <p>17 So to the extent that there is some movement in</p> <p>18 the direction of removing that sentence, that's an</p> <p>19 example of something where we would not be able to agree</p> <p>20 with that. So --</p> <p>21 CHAIRMAN MADIGAN: All right.</p> <p>22 MS. JAHNS-SOUTHWICK: -- I think in a broader</p> <p>23 context, we still feel a great deal of frustration with</p> <p>24 the lack of specificity and deadlines in the preferred</p> <p>25 program alternative. And, overall, that's going to be</p> <p style="text-align: right;">Page 27</p>	<p>1 of how you move forward with decision making,</p> <p>2 recognizing that it's just a programmatic document.</p> <p>3 But we would strongly suggest that language to</p> <p>4 this effect be added, that CALFED or the Council --</p> <p>5 well, again, we're getting into the Council</p> <p>6 recommending. Flag that. To strengthen and refine the</p> <p>7 PPA, so that it provides a more specific definition of</p> <p>8 short and long-term programs, which we don't believe it</p> <p>9 does sufficiently today. This refinement will allow PPA</p> <p>10 to more accurately guide important future decisions on</p> <p>11 the best specific projects for the Bay-Delta watershed</p> <p>12 consistent CALFED mission and solution principles and</p> <p>13 the PPA.</p> <p>14 And, again, I'm told by people who know better</p> <p>15 than I that if you don't add language like that, you are</p> <p>16 setting yourself up for not being able to make those</p> <p>17 decisions in a timely way.</p> <p>18 VICE CHAIR McPEAK: That's true.</p> <p>19 CHAIRMAN MADIGAN: Counselor, do you have any</p> <p>20 advice on this matter?</p> <p>21 MR. HALL: In fairness to Counsel, she hasn't</p> <p>22 seen any of this.</p> <p>23 CHAIRMAN MADIGAN: Right. I understand. She</p> <p>24 has been --</p> <p>25 MS. SCOONOVER: I think at this point what the</p> <p style="text-align: right;">Page 29</p>

1 people in my office have decided to do is to let you-all
2 finish your discussions, and then sort through them and
3 figure out where the best place within the existing
4 document is to reflect your concerns and ideas, to flag
5 if there are any problems that come up. We have not
6 made any attempt to try to edit, from a legal
7 perspective, the substance of the comments that are
8 contained in the BDAC package today. So there are a
9 couple of places where, you know, I perhaps would have
10 said it differently, but it's -- they're your words.

11 And so I appreciate your suggestions, Mr. Hall, and will
12 certainly take them into account. And there are other
13 places where I will be making similar suggestions to
14 Mike and Sunne when the final recommendations are
15 completed, and certainly will advise the CALFED policy
16 group where I think legal sufficiency would be
17 problematic, if we were to accept some of the language.

18 At this point, there's nothing fundamentally
19 problematic in the language that's being suggested.
20 It's more a matter of how things are being said.

21 CHAIRMAN MADIGAN: Okay. Thank you. Eugenia.

22 MS. LAYCHAK: Also, Steve, I summarized what
23 you said. I didn't take it down verbatim.

24 MR. HALL: That's fine. I'll provide you with
25 a written version.

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1 MS. LAYCHAK: Thank you.

2 MR. FONTES: I don't have a specific
3 recommendation, but I think I could add a little clarity
4 here. I think Hap raises a good point about user fees.
5 It's just that that is, to me, is a source of funding.
6 The statement here which deals with appropriations is
7 really congressional oversight. And I don't know
8 whether we are -- whether we need to be that explicit or
9 not. But, you know, where we get the money is one
10 thing, how the congress spends it is kind of another.

11 CHAIRMAN MADIGAN: Right. I agree. Steve.

12 MR. ZAPOTICZNY: I think what Byron was getting
13 at, if I understand him at least, my thoughts are if we
14 say we identified assured funding, and then we keep the
15 second sentence in as is, it could lead some to believe
16 that, gee, we think we have it, but we don't really have
17 it. But most businesses also approve funding for
18 certain elements each year, but we have an oversight.
19 We have an accountability annually. And I don't know
20 what the right words are, because I get a little nervous
21 when you say from the annual appropriations process, and
22 you get elected officials maybe undoing some decisions.
23 But, somehow, there should be accountability oversight
24 built in there that would maybe leave a number of us a
25 little more at ease as to the funding continuing, but

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1 MS. LAYCHAK: Thank you. Okay.

2 CHAIRMAN MADIGAN: All right. Let's go back to
3 the second slide.

4 Roberta.

5 MS. BORGONOVO: I just would call your
6 attention to a letter that was in the back packet. And
7 many of us are supporting guaranteed funding source for
8 the environment. So that got taken out of identified
9 guaranteed funding, and especially ecosystem
10 restoration. And I agree with Hap that I would like to
11 see those words back in.

12 CHAIRMAN MADIGAN: Richard.

13 MR. IZMIRIAN: I think there has to be some
14 sort of acknowledgment that there is a large gap in what
15 people perceive beneficiaries to be, and that that
16 debate has to happen somewhere along here. That should
17 be another bullet or --

18 CHAIRMAN MADIGAN: All right.

19 MR. IZMIRIAN: But it should be explicit
20 somewhere in here that that has to be defined.

21 CHAIRMAN MADIGAN: Okay. Thank you for that.
22 Roger.

23 VICE CHAIR McPEAK: We just need to repeat for
24 Eugenia that somewhere along the way, beneficiaries
25 needs to be defined, needs to be explicit.

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1 people being accountable.

2 CHAIRMAN MADIGAN: Okay. And, you know, that's
3 a tough one. And I guess a part of that was what Sunne
4 and I were trying to say in terms of governance, that in
5 terms of saying maybe the chair of the committee in the
6 state senate, the chair of the assembly, appropriate
7 assembly, people like that are actually involved in
8 governance because you do want oversight. I mean, you
9 know, geez, that's the way the republic works. On the
10 other hand, it's, you know, what you don't want is --
11 well, I don't know how to say it. Do you want --

12 VICE CHAIR McPEAK: I don't know how to say it
13 either, but I do think that I've heard around the room
14 now a really important concept that isn't articulated at
15 this point in what was before you. It has now been
16 added to the list, and that's on accountability.

17 CHAIRMAN MADIGAN: Yeah.

18 VICE CHAIR McPEAK: So we don't want any -- the
19 whole program needs to be -- have assured funding. And
20 what's trying to be captured here is that all program
21 elements, including ecosystem restoration, there was a
22 lot of reaction that didn't want to single that out
23 alone, so that all components were assured funding. At
24 the same time, no one wants to write a blank check
25 without there being the continuing oversight and

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9 (Pages 30 to 33)

<p>1 accountability, and especially accountability on 2 performance.</p> <p>3 And so we need to craft that, introduce that 4 concept. And I do think, at least I don't seen anyone 5 shaking their heads no, that you're for 6 unaccountability. So if we could agree on 7 accountability, that's great. Let's put that in.</p> <p>8 CHAIRMAN MADIGAN: Okay. Let me go back to 9 Hap, because he's the proponent of this.</p> <p>10 MR. DUNNING: I think some very good points 11 have been made about this, and I think Sunne has just 12 hit on a possible solution, which is to rewrite the 13 second sentence in the first bullet to say somehow that 14 there shall be accountability with regard to all funding 15 decisions. Having something in the annual 16 appropriations process is just one way of having 17 accountability. There's other ways of doing it.</p> <p>18 CHAIRMAN MADIGAN: Right.</p> <p>19 MR. DUNNING: And I think we could have a 20 broader sentence that might be -- possibly be acceptable 21 to everybody.</p> <p>22 CHAIRMAN MADIGAN: Okay. All right. I like 23 that. I like that. Mike next.</p> <p>24 MR. STEARNS: Thank you. I first of all wanted 25 to compliment you and the staff on this major effort.</p> <p style="text-align: right;">Page 34</p>	<p>1 say it would be that long-term funding should be 2 developed for all elements, and that appropriate 3 contributions from all beneficiaries should be in 4 proportion to the new benefits received. The notion of 5 actually having formula and rigid formulae, I just don't 6 think is realistic. I think we've proved that in 7 discussions here and in other places. But clearly, 8 again, long-term funding for all the elements is there. 9 And certainly from my community, we're willing to pay 10 for new benefits received in the process.</p> <p>11 CHAIRMAN MADIGAN: Hap. Oh, I already got Hap. 12 Roberta.</p> <p>13 MS. BORGONOVO: I just wanted to go back and 14 clarify since every word is being taken down today. 15 Basically, what we've asked for is dedicated funding for 16 the restoration program. So part of the problem is how 17 do you define guaranteed, how do you define 18 accountability. And I agree with Richard, how do you 19 define beneficiaries. So I just want to reflect that 20 dedicated funding for the restoration program is very 21 important to me.</p> <p>22 CHAIRMAN MADIGAN: Okay. Okay. We have your 23 comments on this. And we will -- we got to think about 24 this one at the end of the day in terms of how we will 25 reflect it. And we are starting to get into the -- the</p> <p style="text-align: right;">Page 36</p>
<p>1 But I wanted to follow up on a comment that Richard 2 made, that the second sentence on number two indicates 3 for me, because this is so broad and complex, I think 4 trying to keep the recommendation as simple as possible 5 is really important. And the more we try to expand on 6 it, the more it opens up the need for further definition 7 and so forth. And as Richard mentioned on that second 8 sentence, a definition of beneficiaries, to me, 9 indicates it would have been cleaner and simpler if that 10 second sentence weren't even there. It just basically 11 states the requirement for developing the formula for 12 funding without trying to define it more and bring into 13 question a need for further definition. It tends to 14 start making things rigid at this program level.</p> <p>15 CHAIRMAN MADIGAN: Okay. All right. Byron.</p> <p>16 MR. BUCK: My comment is somewhat similar. 17 We've had work groups working on the whole funding issue 18 and haven't made too much progress because of the 19 disagreement over what beneficiaries are.</p> <p>20 CHAIRMAN MADIGAN: Right.</p> <p>21 MR. BUCK: And, you know, from what I'm hearing 22 back from negotiation and others, that they've come to 23 the conclusion that coming up with formula and strict 24 rigid beneficiary pays mechanisms are -- justifies logic 25 and the political process. And I think a better way to</p> <p style="text-align: right;">Page 35</p>	<p>1 Steve Hall caution. That's fine. Let's go to the next 2 one.</p> <p>3 CHAIRMAN MADIGAN: Stu, Byron, Rosemary, Bob.</p> <p>4 MR. PYLE: I have some of the same reservations 5 as many people have here about anything we're saying now 6 as endorsing the full package. So we're just talking 7 about comments as we're coming along. And I still have 8 some very serious concerns about adding our support to 9 anything that approves, that indicates an approval, of 10 the preferred alternative as it's written in the 11 documents at this time.</p> <p>12 CHAIRMAN MADIGAN: Got ya.</p> <p>13 MR. PYLE: So this number three, first word, 14 guaranteeing, very troubling to me. I think we should 15 find some other word in here in what were terms we're 16 talking about. I can live with balancing, balancing 17 Delta inflows and outflows. And if you wanted to remain 18 with that same sentence there, I would like to see it 19 read, "Balancing Delta inflows and outflows that support 20 native fish and wildlife populations, with specific 21 impetus on endangered species, taking into account 22 corresponding improvements in ocean management, water 23 supply reliability, and availability for all beneficial 24 purposes."</p> <p>25 But a balancing that is in relationship to</p> <p style="text-align: right;">Page 37</p>

<p>1 water supply reliability and availability for all 2 purposes is what I have in mind. 3 CHAIRMAN MADIGAN: All right. I hear your 4 comments. Byron. 5 MR. BUCK: I've got similar concerns, and I 6 don't have a really good fix for this other than I don't 7 think it's necessary. Frankly, the notion of 8 guaranteeing inflows, we simply can't do that. That -- 9 beyond what's in Porter Cologne (phonetic), and beyond 10 what's in the Clean Water Act and what the State Water 11 Board is responsible for doing, and indeed they have 12 done through implementing the Accord to their water 13 rights decision, we can't guarantee hydrology. We don't 14 control that. It's not within our power. So it's -- as 15 a starter, I don't think we're able to even do what the 16 sentence is saying. 17 Second, we have avoided jeopardy in the system. 18 What we're talking about now is recovery. And the 19 recovery plan is the ecosystem restoration program which 20 involves flows and a lot of other activities. And I 21 think that's what we should be focusing on here. 22 This -- this tends to, I think, give the image that it's 23 all about flows, and then we -- and a certain amount is 24 going to do what we want in recovery. And the science 25 just doesn't support that.</p> <p style="text-align: right;">Page 38</p>	<p>1 stuttering. This is a really important and key point, 2 and it's both substantive and then processed. And I 3 wanted to just -- I want to try to comment on it, 4 because it's embedded and it is a lot of the underlying 5 concern and -- and rancor, if there is such a thing 6 going on here. The words that aren't underlined are the 7 ones I introduced at the last meeting in a, you know, 8 intent language effort without all the nuances of water 9 years as Byron is talking about. And if you are really 10 taking this kind of principle and applying it to 11 operation of a system, one looks at water years. You're 12 making adjustments as you go forward, et cetera. So 13 there's a lot of detail that would have to be explained. 14 I want to stipulate to that. 15 Secondly, the point that Bob Raab made, I, too, 16 personally think is absolutely fundamental. And read 17 the science in saying that additional outflow at certain 18 times of the year is key scientifically to supporting or 19 restoring and sustaining fisheries. Wildlife was added. 20 I love birds. That's fine with me, too. So that point 21 I was trying to get across. 22 However, what I failed to do is to say how 23 we're going to get that additional outflow. Because 24 it's not coming from the current supply. It's not 25 possible probably. Some think that's what should be</p> <p style="text-align: right;">Page 40</p>
<p>1 CHAIRMAN MADIGAN: Rosemary. 2 MS. KAMEI: Yeah. I would also agree that I 3 find the word guaranteeing very troubling. When I first 4 looked at this I thought, well, how are we going to do 5 that and who is going to do it? Who will be responsible 6 and under what conditions? And so I can probably live 7 with Stuart's suggestion on balancing, but I think that 8 this sentence is very difficult to live with considering 9 that the preferred alternative may have the proper frame 10 work, as was said earlier, it lacks the specificity. 11 And so I don't even see how we could even guarantee 12 anything. 13 CHAIRMAN MADIGAN: All right. Thank you. Bob. 14 MR. RAAB: Well, I think we're playing -- in my 15 mind, this is the whole ball game right here. I think 16 that this is why I got into this and many others. And I 17 think that one of the main reasons for the Accord was 18 that the ecosystem was going downhill. And this is 19 proposing that the ecosystem start going back uphill. 20 And I strongly support the language that says guarantee 21 and -- but I would like to see that it would add flows 22 that would recover and then sustain fish and wildlife 23 populations. 24 CHAIRMAN MADIGAN: Sunne. 25 VICE CHAIR McPEAK: I -- I -- now I'm</p> <p style="text-align: right;">Page 39</p>	<p>1 done, others say that's not acceptable, and there's the 2 conflict that's going on in this group. And it's so 3 obvious to me when I say something like guarantee 4 additional outflow, that's why I happen to support 5 facilities. So I should have tied those together. 6 But I wanted to comment on how something that 7 seems as simple as that has us all, you know, commenting 8 on why that's not acceptable for very good reasons. For 9 very good reasons. Because, quite honestly, you can't 10 back away from giving more water to the environment. 11 You can't get more water for the environment from the 12 current supply we've got, folks. And we've got to be 13 able to restore the fisheries. I think the science 14 supports that. And if you can't come together on that 15 one, we're not going to get anywhere. That's why 16 we're -- that is why we're divided. 17 CHAIRMAN MADIGAN: Exactly. Richard. 18 MR. IZMIRIAN: I think you're right, Sunne. 19 VICE CHAIR McPEAK: Will you record that, 20 please? Richard Izmirian said -- 21 MR. IZMIRIAN: Not that I support whatever 22 facilities you're talking about. There are apparently 23 some people here who would want to guarantee deliveries 24 to urban and agricultural users, but not to the 25 environment. I don't think we should establish a double</p> <p style="text-align: right;">Page 41</p>

<p>1 standard here. There are a couple of --</p> <p>2 CHAIRMAN MADIGAN: That is important.</p> <p>3 VICE CHAIR McPEAK: No double standard.</p> <p>4 CHAIRMAN MADIGAN: That's right. Exactly.</p> <p>5 MR. IZMIRIAN: Would you record that, please?</p> <p>6 MS. LAYCHAK: Yes.</p> <p>7 CHAIRMAN MADIGAN: Yes.</p> <p>8 MR. IZMIRIAN: I'm a little concerned about</p> <p>9 this -- the language about the specific emphasis. I'm</p> <p>10 not sure why the word specific is there, except to</p> <p>11 exclude the certain fisheries. I don't know if that was</p> <p>12 meant to. I don't know if that was to scapegoat striped</p> <p>13 bass or whatever.</p> <p>14 Also your -- the mention of ocean fisheries</p> <p>15 management, is that saying that further harvest</p> <p>16 restrictions of salmon should be linked to additional</p> <p>17 outflows? But I'm not sure why that stuff is in there.</p> <p>18 VICE CHAIR McPEAK: Where did it come from?</p> <p>19 I'm not either. Somebody proposed it.</p> <p>20 MR. IZMIRIAN: Yeah. What exactly is meant by</p> <p>21 improvements in ocean fisheries management?</p> <p>22 VICE CHAIR McPEAK: Who proposed that language?</p> <p>23 CHAIRMAN MADIGAN: That was --</p> <p>24 VICE CHAIR McPEAK: Who did?</p> <p>25 MR. ANDREUCCETTI: Pietro.</p> <p style="text-align: right;">Page 42</p>	<p>1 in -- we're not going to do one thing at the expense of</p> <p>2 something else.</p> <p>3 And -- but today, I feel like, where that's</p> <p>4 placed, it will only guarantee the first part of the</p> <p>5 paragraph, and not the latter half. And that's why I</p> <p>6 agree. All along, we said we wanted a balanced</p> <p>7 solution. And that's why I agree with Stu that we</p> <p>8 should put the word balance in there. We want to do</p> <p>9 everything. We want to take care of the Delta, but we</p> <p>10 don't want to undo some of the water supply reliability</p> <p>11 and other things that -- you know, we want to make sure</p> <p>12 that stays.</p> <p>13 VICE CHAIR McPEAK: It's important.</p> <p>14 CHAIRMAN MADIGAN: Absolutely. Mr. --</p> <p>15 VICE CHAIR McPEAK: That's why those words were</p> <p>16 up front.</p> <p>17 CHAIRMAN MADIGAN: Mr. Macauley.</p> <p>18 MR. MACAULEY: Yes, thanks. I don't think any</p> <p>19 of us really knows the answer here, but we recognize</p> <p>20 that a healthy ecosystem requires some, as yet</p> <p>21 undetermined, mix of appropriate flows, ecosystem</p> <p>22 restoration, and acknowledgment of other factors for</p> <p>23 which we really don't have a good handle on, not the</p> <p>24 least of which is, you know, salmon corbula (phonetic)</p> <p>25 and other critters that continue to come into the</p> <p style="text-align: right;">Page 44</p>
<p>1 VICE CHAIR McPEAK: Oh, Pietro did. Okay.</p> <p>2 He's not here.</p> <p>3 CHAIRMAN MADIGAN: That may be right, yeah.</p> <p>4 MR. IZMIRIAN: I wish Pietro was here to</p> <p>5 explain that, --</p> <p>6 CHAIRMAN MADIGAN: Yeah.</p> <p>7 MR. IZMIRIAN: -- because I'm not sure what</p> <p>8 that's targeting.</p> <p>9 CHAIRMAN MADIGAN: I think it's aimed at</p> <p>10 Russian trollers, but okay.</p> <p>11 VICE CHAIR McPEAK: Russian trollers.</p> <p>12 CHAIRMAN MADIGAN: Okay. Alex.</p> <p>13 MR. HILDEBRAND: I think Sunne pretty well</p> <p>14 summed up the views I would have on it. We have to</p> <p>15 acknowledge there are no perfect answers here. And,</p> <p>16 consequently, we do have to balance. And we have to</p> <p>17 balance within the limitations of the resources we're</p> <p>18 willing to make available.</p> <p>19 CHAIRMAN MADIGAN: Okay. Steve Zapoticzny.</p> <p>20 MR. ZAPOTICZNY: Sunne, I agree with a lot</p> <p>21 you're saying. And I think maybe four years ago I would</p> <p>22 have gone along with the word guarantee where it's</p> <p>23 placed in that paragraph. Because my interpretation of</p> <p>24 what that meant was we were going to guarantee</p> <p>25 everything in that paragraph. So we're going to tie</p> <p style="text-align: right;">Page 43</p>	<p>1 estuary. You know, predictably, a water agency will say</p> <p>2 it's not just about flow. But from a biological</p> <p>3 standpoint, as much as I understand biology, there's a</p> <p>4 huge picture here that we're not even considering. And</p> <p>5 we all want the ecosystem restoration program to</p> <p>6 succeed. You know, a more jaundiced view would be that</p> <p>7 this statement assumes it's going to fail. You know,</p> <p>8 and, of course, we don't know what success means. We</p> <p>9 hope it will succeed, but there's a bigger picture here,</p> <p>10 and I don't quite know how to get a handle on it in</p> <p>11 language.</p> <p>12 CHAIRMAN MADIGAN: Right. Ann.</p> <p>13 MS. NOTTHOFF: Yeah. I think, just first in</p> <p>14 processwise, in response to folks feeling uncomfortable</p> <p>15 that each paragraph is committing them to something, I</p> <p>16 think it's quite clear in the preamble that if we could</p> <p>17 agree -- we agree that we're not there yet. And that is</p> <p>18 what is said there in the beginning. So I hope that</p> <p>19 that allows people a little bit more comfort with the</p> <p>20 wording of these individual things of what we're aiming</p> <p>21 for.</p> <p>22 Certainly, from our point of view, guaranteeing</p> <p>23 the necessary flows is a -- is a really rock-bottom</p> <p>24 issue for us. If we don't even have those guarantees,</p> <p>25 we dip below what the assurances that we have in</p> <p style="text-align: right;">Page 45</p>

<p>1 current -- under current law, or we can go to court and 2 get the proposed guarantees. So that's what we're 3 trying to aim for in this entire process is to build on 4 what we've got in existing legal handles and to -- how 5 to integrate all those -- those needs. And, certainly, 6 that's a very important guarantee for us.</p> <p>7 CHAIRMAN MADIGAN: I understand. As you all 8 understand, there was some attempt at putting together a 9 package that comes out of this series of 10 recommendations. This thing is supposed to read 11 coherently. And maybe it doesn't. That's okay. But 12 that was the notion. And so, yeah, I mean, some of 13 these things I understand seem to be, okay, yeah, this 14 one probably speaks more to fish. There are other 15 things in here that probably don't.</p> <p>16 MS. NOTTHOFF: You got to read them all.</p> <p>17 CHAIRMAN MADIGAN: But the notion here is that 18 there is a program that comes out of this, which a lot 19 of you commented on which -- and this kind of seemed to 20 be if then maybe that sort of a -- sort of an 21 arrangement, if that makes any sense.</p> <p>22 Steve Hall.</p> <p>23 MR. HALL: I agree with Byron that there's a 24 lot we can't control, so we can't guarantee anything. 25 To the extent it can be assured, it's already taken care</p> <p style="text-align: right;">Page 46</p>	<p>1 hand, are assured under law. And I don't think anybody 2 disputes that, nor do they dispute the broad intent of 3 this statement, that we're going to have to assure 4 adequate flows to not only sustain those fish, but to 5 improve their numbers. I don't -- nobody disagrees with 6 that goal that I know of.</p> <p>7 The question is how much water do you need, and 8 what other mix of options do you need in order to 9 accomplish that. And there is a lot of evidence to 10 suggest that we are spending far too much time on flow 11 and far too little time on other factors that would have 12 a great deal more beneficial effect on fish populations. 13 Fishing, ocean fisheries management is one of those. 14 And you do not have to reduce the harvest to accomplish 15 that. You can better identify and therefore protect 16 wild stocks and still increase harvest, if you want to. 17 But not near enough attention is paid to that.</p> <p>18 Likewise, invasive species have been identified 19 by biologists as perhaps the single biggest factor in 20 the decline of native species. There isn't one credible 21 plan put forth by any fishery agency to deal with that.</p> <p>22 As to water supply reliability, we have talked 23 a lot about this, but I need to bring it up one more 24 time. You can have chronic shortages and have them be 25 absolutely reliable. It's not just reliability, it's</p> <p style="text-align: right;">Page 48</p>
<p>1 of through the Clean Water Act, the Endangered Species 2 Act, Porter Cologne, CVPIA, and probably some things I'm 3 leaving out. And certainly the boards -- the board 4 administers much of that. And what they don't 5 administer, the federal government administers.</p> <p>6 With regard to the fisheries needing more 7 water, there is no scientific consensus that they need 8 more water. We gave them about a million four in the 9 last few years. Every species that was listed as 10 threatened or endangered, the trend line is towards -- 11 is recovery. None of them are in jeopardy. And that's 12 not my opinion. That's the opinion of the Fish & 13 Wildlife Service. And so you can hardly say that -- I 14 have to disagree with Bob and with Sunne. You can't say 15 that the fish need more water than they're getting 16 today. I think the water that they have dedicated to 17 them could be better managed, and their recovery rate 18 will be even faster than it already is. But I think the 19 amount of water for the fishery has been pretty amply 20 augmented over the last several years.</p> <p>21 And I agree with Richard, nobody should get an 22 ironclad guarantee. The water users certainly don't. 23 They have contracts that they signed a long time ago, 24 and they're not getting anywhere near the amount of 25 water they signed contracts for. The fish, on the other</p> <p style="text-align: right;">Page 47</p>	<p>1 sufficiency of supply.</p> <p>2 And, lastly, I don't see water quality up there 3 anywhere.</p> <p>4 CHAIRMAN MADIGAN: Okay. Tib.</p> <p>5 MR. BELZA: Yes. Most of my points have been 6 covered, but the members that I represent, this is an 7 inflammatory type statement. And the guaranteeing 8 leaves a lot of unanswered questions. Who is going to 9 guarantee, how much, and is it going to be an 10 accumulative effect?</p> <p>11 Steve mentioned several of the variety of 12 agencies, entities, agreements, contracts that people 13 are under, and would it be a cumulative guarantee. In 14 other words, you've guaranteed these different ones now, 15 we're going to add this on top of that. So that's a 16 concern there. And there's some problems -- and some of 17 the other statements that were made here covered that, 18 and I won't belabor that any further. But it's a 19 problem with this guaranteeing and how we go about that.</p> <p>20 CHAIRMAN MADIGAN: All right.</p> <p>21 MR. BELZA: I had one other notion to put 22 forward, and we have in writing and communication. I'm 23 not sure where. But members that I represent think that 24 it would be important to have a paragraph or a bullet or 25 something up front in the document that would say that</p> <p style="text-align: right;">Page 49</p>

<p>1 CALFED should foster local partnership with its member 2 agencies to implement the key provisions in the program. 3 And I'm not sure where that falls in, but that's an idea 4 that we would like to continue to --</p> <p>5 CHAIRMAN MADIGAN: I'm sorry. Say that again. 6 I was distracted.</p> <p>7 MR. BELZA: Okay. I'll just read it, that 8 way -- "CALFED shall foster local partnerships with its 9 member agencies to implement the key provisions in the 10 programs." In other words, the local partnership angle 11 is what we really see as we move down this track being 12 an important idea or concept.</p> <p>13 CHAIRMAN MADIGAN: Yeah. We should say 14 somewhere in this document the important role of local 15 partnerships. I have no problem with that idea. 16 Sunne.</p> <p>17 VICE CHAIR McPEAK: The comments I've heard 18 about reading the document as a whole I thought might be 19 worth just trying to -- to underscore. Because as we 20 looked at this one, and hearing Steve Hall's comment 21 about water quality isn't up there, could we maybe just 22 stipulate every time you see ecosystem restoration, you 23 see also water supply reliability and water quality? 24 We'll put the three words in. We defined water supply 25 reliability to mean sufficient supply, not guaranteed</p> <p style="text-align: right;">Page 50</p>	<p>1 frustration, and maybe that was all that needed to be 2 done, but --</p> <p>3 MS. NOTTHOFF: No, it was in response to I 4 thought Steve did a really good job of starting out by 5 saying how fish don't need water, and then he just 6 proved that because they got more water in the last few 7 years, they're doing a lot better. So I thought he just 8 proved his very own statement, that in fact fish do need 9 water. And I wanted to point out in this --</p> <p>10 VICE CHAIR McPEAK: I tend to agree with you.</p> <p>11 MS. NOTTHOFF: -- specific bullet that it 12 doesn't -- it's not a quantifiable -- it doesn't say we 13 need more water. It means we -- that fish need enough 14 water. It doesn't say more. It says enough.</p> <p>15 VICE CHAIR McPEAK: Well, I'll tell you, they 16 need more water certain years and --</p> <p>17 MS. NOTTHOFF: And that would be enough.</p> <p>18 CHAIRMAN MADIGAN: Right.</p> <p>19 VICE CHAIR McPEAK: And, you know, let's 20 stipulate to everything that Steve said. You're still 21 not getting honest about the fact that the fisheries in 22 low rainfall years are going to need more water, unless 23 you want to wipe them out.</p> <p>24 I don't understand why that one is so hard for 25 the water community to get. Now, I think the</p> <p style="text-align: right;">Page 52</p>
<p>1 shortages. I mean, I just want to acknowledge a 2 failure --</p> <p>3 CHAIRMAN MADIGAN: Right.</p> <p>4 VICE CHAIR McPEAK: -- to repeat the three 5 things as the liturgy every -- in every sentence, 6 because we took your words. Some of you -- some of you 7 failed to repeat all three when you commented.</p> <p>8 CHAIRMAN MADIGAN: Gene.</p> <p>9 MS. LAYCHAK: Wait a minute, Sunne. Sufficient 10 to avoid --</p> <p>11 VICE CHAIR McPEAK: Shortages.</p> <p>12 MS. LAYCHAK: Thank you.</p> <p>13 VICE CHAIR McPEAK: Supply reliability means 14 sufficiency, not continuing shortages.</p> <p>15 MS. LAYCHAK: Okay. Thank you.</p> <p>16 CHAIRMAN MADIGAN: Gene.</p> <p>17 MR. ANDREUCETTI: Mike, it occurred to me that 18 the current mandates maybe the term adjudicate to be 19 used in place of guaranteed.</p> <p>20 VICE CHAIR McPEAK: Adjudicate, Gene? To some 21 of us, that sounds too much like getting more lawyers 22 involved. We really want to keep them out. I think I 23 understand the sentiment.</p> <p>24 CHAIRMAN MADIGAN: Okay. Thank you. Ann. 25 Where did she go? There she is. I think it was out of</p> <p style="text-align: right;">Page 51</p>	<p>1 environmentalists don't get it about where we're going 2 to get that water. Are you both that stupid?</p> <p>3 MR. HALL: Obviously we are, Sunne, or we 4 wouldn't have been at this.</p> <p>5 CHAIRMAN MADIGAN: That's right. You're not 6 kidding. That was good. Let's see. I have 7 Mike Stearns, and then Mike Shaver.</p> <p>8 MR. HALL: But by the way, I want to stipulate 9 fish need water.</p> <p>10 CHAIRMAN MADIGAN: Thank you.</p> <p>11 MR. HALL: And I want to agree with Sunne about 12 dry years remain a problem for fisheries.</p> <p>13 CHAIRMAN MADIGAN: Thank you. Mike.</p> <p>14 MR. STEARNS: I, just quickly, this paragraph, 15 and as well as Steve and Tib's comments, concern me that 16 something that's critical to this whole process that I 17 thought deserved a bullet, and that is that this needs 18 to include the assurance that independent impartial 19 scientific review is going to be a critical component of 20 this whole process.</p> <p>21 VICE CHAIR McPEAK: Which is what Mike Shaver 22 was also trying to remind us of earlier, the continuous 23 improvement in management, adaptive management, yes.</p> <p>24 CHAIRMAN MADIGAN: Right. Right. I agree.</p> <p>25 VICE CHAIR McPEAK: It's important.</p> <p style="text-align: right;">Page 53</p>

<p>1 CHAIRMAN MADIGAN: Absolutely. Mike.</p> <p>2 MR. SHAVER: I believe the word reference for</p> <p>3 balancing instead of guaranteeing would be too weak to</p> <p>4 deter future planning that might not be responsible in</p> <p>5 this management. I also agree that guaranteeing may be</p> <p>6 too strong to allow inclusion of some of the partners</p> <p>7 that we want to be along with this program. So I think</p> <p>8 we -- if we got some support of a word that we find</p> <p>9 somewhere between guaranteeing and balancing. And I</p> <p>10 believe supporting may be that, supporting Delta inflows</p> <p>11 and outflows that sustain native fish populations, and</p> <p>12 could be worked as needed.</p> <p>13 CHAIRMAN MADIGAN: Okay.</p> <p>14 MR. SHAVER: Providing just some word that</p> <p>15 finds a middle ground.</p> <p>16 CHAIRMAN MADIGAN: There is clearly a</p> <p>17 significant divergence of opinion on this. This gets</p> <p>18 back to the Steve Hall caution, and we are going to have</p> <p>19 to reflect that there is not consensus on this. And</p> <p>20 this as, I think with a couple of amendments that have</p> <p>21 been suggested here that are helpful, probably will go</p> <p>22 forward as a Sunne and Mike, and we will try to note</p> <p>23 those divergences of opinion. It seems to us that</p> <p>24 guaranteeing those inflows is a part of what ultimately</p> <p>25 becomes a possible deal around here. And I really -- I</p> <p style="text-align: right;">Page 54</p>	<p>1 extremely difficult to do on a technical basis, because</p> <p>2 you've got the mix of what's going on with the growth</p> <p>3 and population, change in demographics, changes in the</p> <p>4 economy, changes in cropping patterns. So coming up</p> <p>5 with absolute savings targets is an illusory goal.</p> <p>6 We'll never get there and we'll argue about the targets</p> <p>7 and never get anything done.</p> <p>8 That was the whole notion behind the California</p> <p>9 Urban Water Conservation Council, to get away from</p> <p>10 arguments about numbers, and to talk about what can we</p> <p>11 practically do, what's economically effective, what is</p> <p>12 the conservation we can get on the ground. So I'm very</p> <p>13 strongly in support of quantifiable objectives of</p> <p>14 tactics to be implemented. But actually target goals</p> <p>15 would just be a circular argument. And I don't think we</p> <p>16 get the savings, which is what we all want to have</p> <p>17 happen.</p> <p>18 Second item on -- I just find it rather vague.</p> <p>19 And I think rather than saying links, we could say</p> <p>20 optimizing complementary benefits between storage, water</p> <p>21 use efficiency, et cetera, would be helpful to me. As</p> <p>22 it reads now, I don't understand what it means.</p> <p>23 CHAIRMAN MADIGAN: It means we all get well</p> <p>24 together.</p> <p>25 MR. BUCK: And to me that is -- that's --</p> <p style="text-align: right;">Page 56</p>
<p>1 understand that everybody has views about how we get to</p> <p>2 the deal. But, you know, this is sort of like in some</p> <p>3 card games where at least a couple of us have had to put</p> <p>4 all of our cards on the table here, and this is one of</p> <p>5 our cards for how the deal finally gets done. But I</p> <p>6 thank you, each of you, for your input on it. Because</p> <p>7 this is a matter of clear disagreement as well as great</p> <p>8 importance.</p> <p>9 All right. Let's go on to the next one for a</p> <p>10 minute. And we will come back and we can revisit these</p> <p>11 things. And at the end when we have revisited all the</p> <p>12 bullets, you know, we will have opportunities to confirm</p> <p>13 that even despite what seems to be this notion of things</p> <p>14 moving forward, that this one is still inappropriate or</p> <p>15 whatever from anybody in this group. And that's</p> <p>16 perfectly acceptable.</p> <p>17 Okay. Next one.</p> <p>18 CHAIRMAN MADIGAN: Byron, Richard.</p> <p>19 MR. BUCK: I guess I'll do both at once. On</p> <p>20 the first one, I understand the sentiment, but I think</p> <p>21 the only thing we could really quantify in this world</p> <p>22 with respect to water use efficiency is the efforts.</p> <p>23 What is it we're going to do, make -- put people to task</p> <p>24 on actions they are going to implement on the ground.</p> <p>25 Actually trying to quantify savings is something that is</p> <p style="text-align: right;">Page 55</p>	<p>1 CHAIRMAN MADIGAN: And I don't mean to --</p> <p>2 MR. BUCK: Yeah.</p> <p>3 CHAIRMAN MADIGAN: -- give you a cheap answer</p> <p>4 to your question.</p> <p>5 MR. BUCK: And that's helpful. I mean, because</p> <p>6 that's what I'm seeing by -- what we're trying to do is</p> <p>7 have the complementary benefits of all these things</p> <p>8 optimized. And so links didn't say it for me, and</p> <p>9 complementary benefits does.</p> <p>10 CHAIRMAN MADIGAN: Okay. Sunne.</p> <p>11 VICE CHAIR McPEAK: Okay. Actually, I was</p> <p>12 going to say, somebody has pointed out they didn't know</p> <p>13 what the word optimizing means either. And because that</p> <p>14 has to be further discussed, what -- what does optimize</p> <p>15 mean. Complementary benefits might work, but I wanted</p> <p>16 to push the discussion just a little bit, Byron, to</p> <p>17 comment on what I think that means. And it's pretty</p> <p>18 fundamental again. It sort of means, if we're going to</p> <p>19 do storage, anybody who is going to get storage, water</p> <p>20 out of storage, has to have optimized, has to really</p> <p>21 have done an honest job on conservation and water use</p> <p>22 efficiency. I mean, that's at the heart of it.</p> <p>23 And so it's not doing both together. It means,</p> <p>24 really, a connection. That's what is -- is being</p> <p>25 discussed. And I -- I don't know, does optimizing</p> <p style="text-align: right;">Page 57</p>

1 benefits mean that? Even understanding all the
2 technical things you've said about water efficiency use,
3 and targets, and the recropping patterns, and all of
4 this just gets very -- gets very difficult, and is
5 scientific, and I have an appreciation for. But at
6 another level, if we're really committed and sincere,
7 we've got to do as much on water use efficiency and
8 connect that in some honest way to the -- to additional
9 expanded supply. We don't want to expand supply and not
10 have -- have used water as effectively as possible. I
11 think it is a sin to waste water and a crime to waste
12 money. And if that was the only thing we ever said to
13 CALFED, maybe we would sort of have as a working
14 principle what we need to do here. But that's what this
15 is about.

16 CHAIRMAN MADIGAN: All right. I have Richard,
17 and then Steve, and then Roberta.

18 MR. IZMIRIAN: Well, I was going to talk about
19 the word optimization, but Sunne jumped in there. When
20 I think of optimization, I think of all those graduate
21 school mathematical algorithms for determining those
22 things. One of the things you have to do to optimize is
23 decide what it is you are going to optimize, come up
24 with some parameters, some standards for optimization.
25 That doesn't happen. We don't even have definitions for

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1 of the phased decision making, which is a really central
2 process that -- I think that allows us to make a lot of
3 these decisions in a more reasoned way. And the reason
4 that I think it's important to have some quantifiable
5 objections -- objectives is because that allows you to
6 measure whether you've gotten to a certain point or not,
7 and that triggers the next step of the analysis and the
8 next, you know, if that's not working, this is what
9 we're going to look at next. And it's -- it's very
10 important to have some way of determining if you've
11 gotten there or not so that you can actually implement
12 some phased decision making. And the whole -- the whole
13 approach of phased decision making, I think, is if
14 there's any hope we're going to agree on any of this, I
15 think it's essential that we keep the phased decision
16 making approach so that we can agree on different --
17 different elements at the appropriate time.

18 CHAIRMAN MADIGAN: Yeah. You could almost
19 substitute some way of determining for quantifiable. I
20 mean, that -- not literally in terms of sentence
21 structure, but that -- that is the notion. And at some
22 point, I would like to get to that question that Byron
23 raises of this notion of the quantifiability of what
24 we're aiming for. Maybe there's a better way to say it.
25 It seems that, to the extent that you can quantify, that

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1 things like water supply reliability that we can come up
2 with optimization standards for. So that has to be
3 another bullet in here somewhere is to have a discrete
4 program for coming up with those standards.

5 CHAIRMAN MADIGAN: Thank you. Steve. Yeah.

6 MR. HALL: I just thought I'd be over here for
7 a while and see if I see the light. Let's see. I don't
8 know if I agree with Byron, don't know if he said
9 anything about cost effective in the first bullet. Did
10 you, Byron? But, I mean, you know, you can get real
11 efficient if you don't care what it costs. But cost
12 effective has got to be in there somewhere.

13 And then I would add one minor,
14 noncontroversial thing to this list in five, and that
15 would be adequate Delta conveyance. And I'll let you
16 define what adequate is.

17 VICE CHAIR McPEAK: I know what adequate is.

18 MR. HALL: There you go. Then you won't have
19 any trouble defining it.

20 CHAIRMAN MADIGAN: Okay. Thank you for that.
21 Ann. I'm sorry. Geez, Roberta. Excuse me. Go ahead,
22 Roberta.

23 MS. BORGONOVO: No, if you --

24 MS. NOTTHOFF: I just want to say that I think
25 what this gets us to is really a very important concept

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1 we're better off. We avoid argument, we have some clear
2 understanding of where we're headed. If that's simply
3 not scientifically possible, then some way of
4 identifying maybe becomes the way we think about it.
5 But I would like to -- I would like your input on the
6 matter.

7 MS. NOTTHOFF: But, I mean, it does seem like
8 we have examples of where we can quantify. We know
9 that, you know, Met, for example, is using -- you know,
10 Fran could talk about how, through the water
11 conservation programs that they developed there, that,
12 you know, they're using "X" amount of water the serve
13 "X" the same number of people and still having more
14 water left for Mono Lake. I mean, there -- it's not --
15 it's not rocket science. I mean, it has been done. You
16 can quantify. You can see how much water you've got as
17 a result of implementing conservation measures.

18 CHAIRMAN MADIGAN: Thank you. Roberta.

19 MS. BORGONOVO: In the Urban Water Conservation
20 Program and the Ag Water Conservation Program, we have
21 been working for measurable objectives. There -- they
22 have a slight -- they have a different approach in the
23 urban sector. It is geared toward implementation of
24 certain practices. But there's a way to quantify that.
25 There is even a suggestive mechanism for how you would

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16 (Pages 58 to 61)

<p>1 measure whether agencies are doing that in the 2 agricultural sector. We have been looking at targeted 3 benefits and a quantifiable objectives, again, so that 4 you can measure that. And I think it's very important, 5 because many of us supported the water bonds because we 6 wanted public money coming into those programs for 7 public benefits. And that would be tied to ecosystem 8 restoration water quality. And if you aren't able to 9 measure that local cost effectiveness and then have the 10 threshold above for which you use the public money, 11 several of us are going to feel foolish for having 12 supported those bonds so vehemently.</p> <p>13 CHAIRMAN MADIGAN: Sunne.</p> <p>14 VICE CHAIR McPEAK: I think that what Roberta 15 said is -- is very much on target. And, in fact, Eric 16 had just leaned over and said why aren't we saying 17 measurable objectives. And here is another one of those 18 issues that if we use the difficulty of coming up with 19 measurements as the excuse not to do it, then we -- 20 shame on us. If we acknowledge all of the 21 complications, and there are intricacies, scientific 22 change -- science goes differently as practices change. 23 That's not said well. I mean, there are things that 24 happen when you change practices. Acknowledging all of 25 that, that makes it more difficult to measure. Okay.</p> <p style="text-align: right;">Page 62</p>	<p>1 which has nothing to do with water supply. So why would 2 you make -- you have to be careful then about those 3 linkages. New yield for consumptive uses, certainly --</p> <p>4 VICE CHAIR McPEAK: Yes.</p> <p>5 MR. BUCK: -- we can make that linkage, and 6 it's already there in law anyway, so it doesn't need to 7 be said. It's just we have to be very careful about --</p> <p>8 CHAIRMAN MADIGAN: You're right.</p> <p>9 MR. BUCK: -- making sure we have a proper 10 nexus with each one of these linkages.</p> <p>11 CHAIRMAN MADIGAN: Absolutely.</p> <p>12 VICE CHAIR McPEAK: And beneficial --</p> <p>13 complementary benefits, what is that?</p> <p>14 MR. BUCK: Well, that -- that was a 15 different -- I was taking a different notion of this.</p> <p>16 VICE CHAIR McPEAK: Okay.</p> <p>17 MR. BUCK: And that's just saying that a lot of 18 these things work together. That's the whole notion of 19 the CALFED program is that --</p> <p>20 VICE CHAIR McPEAK: Got it.</p> <p>21 MR. BUCK: -- a lot of these parts interact and 22 are complementary. But, you know, having said what I 23 said on linkage, I'm okay with that. Just, you know, 24 recognizing that we have to be careful on the linkage.</p> <p>25 CHAIRMAN MADIGAN: Optimizing appropriate</p> <p style="text-align: right;">Page 64</p>
<p>1 But not use it as the excuse not to do it. So I just 2 wanted to try to, again, express the spirit in which 3 we're trying to do this.</p> <p>4 And, also, on number five, Mike and I -- you 5 know, as flip as I am to Steve Hall because he makes it 6 so easy to be that way, I apologize. You know, 7 obviously, water -- the conveyance isn't there. It 8 should be. We weren't trying to take it out. This 9 is -- you know, we realize it's all linked together.</p> <p>10 And then lastly, I asked Byron for a response, 11 but then didn't give him the opportunity on 12 complementary benefits to respond. And I thought maybe, 13 Mr. Chairman, we should get his comments.</p> <p>14 CHAIRMAN MADIGAN: Sure. Byron.</p> <p>15 MR. BUCK: When you explained what you were 16 looking for here, you were clearly going with linkage in 17 the --</p> <p>18 VICE CHAIR McPEAK: I was.</p> <p>19 MR. BUCK: -- sort of permitting notion that 20 for anybody getting storage benefits, they would 21 obviously have to do conservation, which I don't 22 disagree with. I think we have to be very careful 23 though about how we link that. We might build storage 24 for water quality, which has nothing to do with water 25 supply. We might build storage for environmental flows,</p> <p style="text-align: right;">Page 63</p>	<p>1 links.</p> <p>2 MR. BUCK: Yeah, appropriate links.</p> <p>3 CHAIRMAN MADIGAN: Okay. Judith.</p> <p>4 MS. REDMOND: I just wanted to speak in favor 5 of the linkage concept. And I think the way I 6 understand it is the way that Sunne articulated it. 7 That for me, it's -- it's an assurance in a way. It's 8 sort of a principle that these things, you can't get one 9 without making effort on the other. So for us, it's 10 important.</p> <p>11 VICE CHAIR McPEAK: And how Byron then 12 explained, it's obviously for -- the linkage to 13 consumptive use or expanded supply. I mean, I -- yeah.</p> <p>14 CHAIRMAN MADIGAN: Alex.</p> <p>15 MR. HILDEBRAND: I was just going to suggest 16 that we quantify to the extent that it's reasonably 17 possible.</p> <p>18 VICE CHAIR McPEAK: Say that again. We didn't 19 hear you. I didn't hear you.</p> <p>20 CHAIRMAN MADIGAN: To quantify to the extent 21 that it's reasonably possible to do that.</p> <p>22 VICE CHAIR McPEAK: Oh, that's reasonably 23 possible.</p> <p>24 CHAIRMAN MADIGAN: Yeah. Steve, and then Fran. 25 Okay.</p> <p style="text-align: right;">Page 65</p>

<p>1 MR. ZAPOTICZNY: We also agree that in the 2 first -- in number four, we should have cost effective. 3 So we -- quantifiable objectives obviously need to be 4 there. I'm just trying to think of why some of us feel 5 uncomfortable with that. I don't know if it's trust, 6 lack of, wondering what would happen if we save. Maybe 7 we need to have some kind of incentive for, you know, 8 local agencies who save, or if they save the water, they 9 get the water, or you know. One of the things I'm just 10 trying to wonder why there's so much push back, and even 11 in myself, and fully accepting this, is if I saved 12 water, there's always a chance that those savings could 13 come back to haunt me in the future. So is there any 14 way that -- and I don't have the answer to this. I'm 15 just throwing out, is there an incentive we need to give 16 everyone there to save?</p> <p>17 CHAIRMAN MADIGAN: A reward to people who do. 18 Yeah. Okay. Thank you. Fran.</p> <p>19 VICE CHAIR McPEAK: That is the -- I think it's 20 a point where it's -- oh, I'm sorry. Fran.</p> <p>21 CHAIRMAN MADIGAN: Okay. And then Roberta. 22 MS. SPIVY-WEBER: I think that the -- well, 23 we're mixing several things together here. And I guess 24 the principle points that I think are important that 25 have been made are, one, the phased decision making</p> <p style="text-align: right;">Page 66</p>	<p>1 on the science base for all of these programs, but I 2 don't -- I'd like to have it on record that that hasn't 3 been inserted.</p> <p>4 When we were talking about optimizing links 5 between storage, water use efficiency, and environmental 6 restoration, water quality, and water transfers, I think 7 that we are still back at where there is disagreement. 8 And the water storage, to me, in my mind, it ought to be 9 water supply reliability. And so the whole issue is how 10 much water supply reliability can you get out of these 11 other programs. And so what's important to me is that 12 we optimize those programs, and that decisions on both 13 the storage and the conveyance are not made until the 14 end of stage one.</p> <p>15 CHAIRMAN MADIGAN: Sunne. 16 VICE CHAIR McPEAK: I raised my hand to speak 17 as Steve as a tendency had, I think, very artfully and 18 appropriately used a term about trying to figure out why 19 you were pushing back from some wording, which is a 20 pretty good exercise for all of us. You know, we read 21 the words, and we have a gut reaction. Either we like 22 it or we don't like it. And it's probably good to try 23 to articulate that, why is it that we don't like it. 24 And so I wanted to -- to acknowledge that's a -- that's 25 a good exercise we all should be going through as</p> <p style="text-align: right;">Page 68</p>
<p>1 associated with -- with making these connections. 2 Secondly, I agree, actually, with both Ann and 3 Byron. Byron is correct in the sense that quantifying 4 exactly how much water comes from putting in a low-flow 5 toilet, or how much water is saved in an area where a 6 low-flow toilet program is being implemented, is 7 expensive, and ultimately, very difficult to do. 8 However, there are savings. And -- and while we don't 9 know exactly how much, there -- there is a way of 10 getting into kind of a ballpark notion of what will be 11 saved through some of these programs. So I think when 12 you start using the word quantifiable, largely, it's how 13 precise do you want to be. And so measurable objectives 14 is a little less strict in terms of coming up with a 15 single number that you're going to actually have to 16 reach and justify, which could cost all of your CALFED 17 money if you ended up trying to do that.</p> <p>18 CHAIRMAN MADIGAN: Roberta. 19 MS. BORGONOVO: I wanted to go back to phased 20 decision making. I think Mike made the point early on 21 that when we've talked about adaptive management, to me, 22 that is phased decision making. So when we were talking 23 about flows, that there's an ERP, and it calls for flows 24 above the baseline, and there's been a lot of science 25 that's gone into that. I think that there is agreement</p> <p style="text-align: right;">Page 67</p>	<p>1 we're -- as we're engaging in this, not just to push 2 back, but then to articulate.</p> <p>3 But what he said was very important. And 4 Mike Stearns and I looked at each other, because it's 5 sort of fundamental. This notion of saving, you get to 6 save, you get to keep the water you save and use it 7 somehow. And that's going to be -- that's a problem, 8 that's a real issue for urban, it's for businesses 9 within the urban areas, it's for ag.</p> <p>10 Now, we have other mechanisms by which if they 11 save water, if all of us save water, trade it to other 12 purposes. I mean, you know, but the notion of why would 13 someone then save if there's not the incentive to have 14 the continued beneficial use is actually, I guess, a 15 pretty fundamental undercurrent that has to be 16 identified.</p> <p>17 That then goes further to what -- if I could 18 comment on what Roberta said about phased decision 19 making, and I'm trying to articulate again, why are 20 people pushing back from that. And it's because -- it 21 is -- I think it's because it's perceived as code word 22 for not -- not including the -- in the first set of 23 actions all of the components of the solution that some 24 of us have concluded are needed. I mean, it is deferral 25 on the facilities, and some say you can't do it.</p> <p style="text-align: right;">Page 69</p>

<p>1 So phased decision making, I understand. I 2 want to hear your comment. Doesn't mean adaptive 3 management as we go forward. It means deferral of 4 decisions on facilities to the end of phase one. Is 5 that right, stage one? 6 MS. BORGONOVO: I could remember 7 Bob Perciasepe saying -- 8 CHAIRMAN MADIGAN: Grab a mic. Roberta. 9 MS. BORGONOVO: I just think of a comment that 10 Bob Perciasepe made early on in this process, and he 11 talked about the storage and the conveyance. They're 12 great big issues. And he talked about having to have a 13 whole lot of information before you move ahead on them. 14 And when you talk about phased decision making and 15 adaptive management, the advantage of adaptive 16 management, it really -- it came out of the scientific 17 restoration work and all of the unknowns that have been 18 mentioned many, many times here. But how do you do the 19 best thing for the ecosystem? Yes, of course, we need 20 water. We know we need water in the dry years. But 21 there are lots of ways in which we are going to have to 22 be learning as we go forward. And that's true in all 23 the other programs. It's as Fran said, you are going to 24 be able to quantify some of those savings. What is the 25 exact quantity, that may not be known now.</p> <p style="text-align: right;">Page 70</p>	<p>1 whether it's a -- whether it's an initiation program, 2 incentive money, a restriction on whether you 3 participate in a storage, whether -- if your water use 4 efficiency is not to a certain level, or whatever. But, 5 again, I'm saying that I think we should take out 6 optimizing and put identify CALFED related linkages. 7 CHAIRMAN MADIGAN: Okay. Thank you. Okay. 8 Olene, let's move onto the next overhead. Hap, did you 9 want to say something? 10 MR. DUNNING: Yeah. Go ahead. 11 CHAIRMAN MADIGAN: Oh, okay. Hap. 12 VICE CHAIR McPEAK: Hap is ahead of us. 13 CHAIRMAN MADIGAN: Yes. 14 MR. DUNNING: I want to make a comment on this 15 next one about the decision making process. Keeping in 16 mind we've worked a lot on governance, and what the 17 recommendation has been is to have a state/federal 18 commission that would run CALFED, and then a conservancy 19 that would do the ecosystem work. The part of this that 20 bothers me is the comment that the structure and process 21 should address participation by the California 22 legislature and congress. And I want to emphasize I 23 certainly approve of close cooperation and keeping them 24 informed and so forth, but if you look at what's 25 suggested, there's a reference here to the December 10,</p> <p style="text-align: right;">Page 72</p>
<p>1 So when we say phased decision making, that to 2 me means you proceed with the programs, but you don't 3 make these big decisions on storage and conveyance until 4 you have more knowledge. So that's just -- that's just 5 how I see it. And the disagreement has always been on 6 the ways in which we get the water. That's been our 7 disagreement. You have heard us say over and over 8 again, we look at these other -- all those other issues 9 that are over there, conservation, reclamation, 10 transfers that are appropriate, et cetera. And if you 11 don't get enough water, then you decide do you need more 12 storage. But to start off with storage, which means 13 taking more water out of the system, we have always seen 14 as making it difficult to go back and do true recovery 15 of the species over the long-term. So that's just -- 16 that's my thinking. 17 CHAIRMAN MADIGAN: Okay. Stu. 18 MR. PYLE: I think one of the reasons why it's 19 hard to deal with number five is that optimizing links 20 is not a very communicative term. It doesn't really 21 tell you what is intended. So you have to try to guess. 22 But I think you could do better by, and I think what's 23 related to CALFED, is to identify CALFED related 24 linkages. Because we're -- we're only interested here 25 in those linkages which are related to a CALFED program</p> <p style="text-align: right;">Page 71</p>	<p>1 1999 memo from Mike and Sunne to myself and EZE Burts. 2 And if you look at that memo, what they had said in the 3 third bullet was there should be participation by state 4 legislators, and members of congress from California 5 should be institutionalized in the governance structure, 6 perhaps even as ex officio in the governing body. I 7 think that's a very bad idea. We don't do that 8 normally. Legislators do not sit on the State Water 9 Board or work at DWR or do other things. We're talking 10 about agencies here which would be part of the executive 11 branch. And I think that there are very good reasons 12 why we don't normally do that. We have concepts about 13 separation of powers, which are fundamental to our 14 system of government. The legislators are there to set 15 the rules, pass the laws, appropriate the money. The 16 agencies are there to carry out their commands. And 17 that's the way we've done it, and I think there's very 18 good reasons for doing it, and I think it would not be 19 good to include elected officials as members on either 20 the governing body or the conservancies. So I would 21 like to register my dissent on that particular point. 22 CHAIRMAN MADIGAN: Okay. Thank you. Bob. 23 MR. RAAB: Point of information first, is this 24 recommendation supposed to cover the whole governance 25 issue?</p> <p style="text-align: right;">Page 73</p>

<p>1 CHAIRMAN MADIGAN: Yeah.</p> <p>2 MR. RAAB: I don't see anything else in here in</p> <p>3 the bullets that covers --</p> <p>4 CHAIRMAN MADIGAN: Yeah, this is --</p> <p>5 MR. RAAB: Okay. Well, I think it's -- it</p> <p>6 falls short of covering the governance issue, because</p> <p>7 there is a crucial remaining issue, and that is</p> <p>8 oversight. And it's not mentioned. And we have had --</p> <p>9 we have a history of decision making. Some of it was</p> <p>10 transparent, but it -- they make bad decisions as far</p> <p>11 as, say, fish and wildlife, and habitats, the ecosystem</p> <p>12 in general. Bad decisions were made. If we don't have</p> <p>13 some compensatory way of the public focusing and having</p> <p>14 a say in decision making that they perceive to be bad,</p> <p>15 then we're not -- we don't have a level playing field.</p> <p>16 So I suggest that we add a para -- just a sentence that</p> <p>17 says there should be oversight, an independent entity,</p> <p>18 that would review decisions.</p> <p>19 CHAIRMAN MADIGAN: Okay. Thank you. I don't</p> <p>20 think Sunne and I, either of us, are under any</p> <p>21 misapprehensions about the efficiency of the democratic</p> <p>22 process here. I do think -- and I think we have some</p> <p>23 notion of separation of powers as well. I think what we</p> <p>24 were trying to do, particularly in response to officials</p> <p>25 at both the state and federal levels who said I am here</p> <p style="text-align: right;">Page 74</p>	<p>1 will, the separation of the branches, and it's the</p> <p>2 tension back and forth. When I look at the word</p> <p>3 institutionalized in our memo, there's a lot of ways</p> <p>4 that can be done, including the specification of</p> <p>5 oversight hearings and meetings and joint sessions</p> <p>6 between the committees of two houses, both in the state</p> <p>7 and congress.</p> <p>8 But in order to get accountability, there has</p> <p>9 to be an involvement. And I would always opt for</p> <p>10 everybody participating as a preferred way to ensure</p> <p>11 this program goes forward than a separation that is</p> <p>12 unnecessary in still trying to respect the separation of</p> <p>13 the branches. And there is -- there are good examples</p> <p>14 in California of legislators who serve ex officio, yes,</p> <p>15 granted, nonvoting, but on state commissions. Most</p> <p>16 notably, the California Transportation Commission is</p> <p>17 structured to have, as ex officio to those -- not ex</p> <p>18 officio nonvoting. Ex officio does not necessarily mean</p> <p>19 nonvoting. But it's --</p> <p>20 CHAIRMAN MADIGAN: Board of Regions.</p> <p>21 VICE CHAIR McPEAK: So I acknowledge -- yeah,</p> <p>22 exactly. Board of Regions, there are many examples of</p> <p>23 where legislators are ex officio to the commissions that</p> <p>24 are administering an oversight. So you can go either</p> <p>25 way. We're just respectfully trying to acknowledge the</p> <p style="text-align: right;">Page 76</p>
<p>1 to tell you that we are going to be involved in this</p> <p>2 process, to recognize the reality of that and say you</p> <p>3 bet. Now, is it as an ex officio member of something?</p> <p>4 Geez, I don't know. I mean, you know, and that's not a</p> <p>5 decision that we're going to make anyway. But it -- it</p> <p>6 could be. And it could be. But it also might be</p> <p>7 something else.</p> <p>8 But the point of it is that it's been made very</p> <p>9 clear to both of us by people who currently hold</p> <p>10 positions, as we described them in there, that they're</p> <p>11 going to be involved in this. We can either do that in</p> <p>12 an adversarial manner, and you can. I mean, that's what</p> <p>13 you do. You propose, somebody else disposes, you know,</p> <p>14 all those sorts of things. Or you can try to bring all</p> <p>15 of the various parties into the decision making process</p> <p>16 as it goes, and make it one with public participation,</p> <p>17 absolutely, which I think was embedded in what Sunne and</p> <p>18 I were trying to say. And that's why -- that's why we</p> <p>19 specifically talked about the participation of those</p> <p>20 people.</p> <p>21 Sunne.</p> <p>22 VICE CHAIR McPEAK: Might I just add to that</p> <p>23 that the earlier discussion today about accountability</p> <p>24 needs to recognize that a lot of accountability gets</p> <p>25 introduced into the system because there's the, if you</p> <p style="text-align: right;">Page 75</p>	<p>1 reality of if you want continuing involvement and</p> <p>2 accountability, you damn well better get the</p> <p>3 legislatives and members of congress into this process.</p> <p>4 CHAIRMAN MADIGAN: Hap, and then Steve.</p> <p>5 MR. DUNNING: Well, I said I certainly support</p> <p>6 involvement. I was just speaking against that</p> <p>7 particular mechanism. Bob, a minute ago, raised a</p> <p>8 question that I think is important, and really it goes</p> <p>9 to one of the points that was made rather strongly in</p> <p>10 the letter that was signed by seven of the environmental</p> <p>11 representatives, and now has also been signed by two of</p> <p>12 the fishing organization representatives, and that is</p> <p>13 that the PPA just doesn't deal, really, with financing</p> <p>14 and governance adequately. It's all sort of relegated</p> <p>15 to this separate implementation plan. We made the</p> <p>16 point, and I think we stick by it, that it really ought</p> <p>17 to be right in the preferred program alternative.</p> <p>18 Particularly, when you're sort of dealing with sort of</p> <p>19 subsidiary questions here in this bullet and talking</p> <p>20 about having high level representatives of each of the</p> <p>21 CALFED agencies, well, in what, high level</p> <p>22 representatives in what? I mean, we've got the policy</p> <p>23 group for the interim, we've got this proposal to have a</p> <p>24 new commission for the long term, and to have a</p> <p>25 conservancy to do the ecosystem. And it seems very</p> <p style="text-align: right;">Page 77</p>

<p>1 incomplete to me to make these references without 2 talking about what the basic suggestions are on both 3 interim and long-term governance and financing. 4 CHAIRMAN MADIGAN: Okay. It does need to be. 5 I agree with you. And I think both of us would like to 6 see that. I mean, I think that's a part of the 7 intention here is to bring that in. 8 Steve. 9 MR. HALL: I agree with the goals in your 10 letter and what's here, and agree with the specific in 11 terms of Hap that he expressed earlier. And so I just 12 recommend that you go from participation by the 13 legislator and congress to involvement. That's my only 14 suggestion. 15 CHAIRMAN MADIGAN: Okay. Roberta. 16 MS. BORGONOVO: I do like your first sentence 17 instituting a transparent decision making process that 18 incorporates participation with tribes, local, and 19 environmental justice interests. And going back to what 20 Hap said, I think there's been a lot of work done on the 21 way in which the governance structure might go forward. 22 And so I am one of those that signed the letter that 23 thinks that has to be a part of the PP -- the preferred 24 alternative. 25 CHAIRMAN MADIGAN: Torri.</p> <p style="text-align: right;">Page 78</p>	<p>1 sufficient inclusion of tribal governments. Stakeholder 2 implies citizens of the community that have stake in a 3 resource. Tribes are sovereign governments elected by 4 the citizens of the tribe. These elected governments 5 have the powers to regulate not only the members of the 6 tribe, but all who utilize and may impact the tribe's 7 resources. A tribe can set requirements on the land use 8 within the tribe's reservation. Tribes can also set 9 water quality standards on tribal waters. 10 The Big Valley Band of Pomo Indians are located 11 on the shore of Clear Lake, and rely on the resources of 12 these waters. The tribe is developing management goals 13 and water quality standards. CALFED agencies will be 14 implementing program goals within the Clear Lake 15 watershed. Big Valley needs to be included in the 16 decision making process and management activities to 17 protect the resources of the tribe. 18 CHAIRMAN MADIGAN: Mike, would it help if we 19 defined stakeholder to include governmental entities 20 such as -- such as tribes? Would -- you know, we could 21 say institutionalize, institutional, and stakeholder, or 22 we could do this a lot of different ways. But maybe 23 it's just a way of defining stakeholder, or maybe 24 stakeholder has become less than it should have been in 25 terms of the term. But I don't think we quarrel for a</p> <p style="text-align: right;">Page 80</p>
<p>1 MR. ESTRADA: Yeah. I just want to commend 2 both you and Sunne, and also the staff, for putting this 3 first sentence in there. And it seems -- it strikes me 4 as somewhat puzzling that we actually have to put this 5 into the PPA. And just representing some of the 6 environmental justice groups, I mean, we've had a lot of 7 frustration coming into this process very late, which I 8 think has actually hurt the process in terms of getting 9 our perspectives on the table. 10 So I'm comfortable with the idea of 11 transparency. And I guess the thing I would really push 12 for, and I agree with others, is to get more specific 13 about governance and oversight, how we're going to do 14 that, what does transparency mean, what does 15 accountability mean. Particularly, and I'll speak from 16 people I represent, is what that means for environmental 17 justice interests. But I definitely support where 18 you're going with this though. 19 CHAIRMAN MADIGAN: Okay. Mike. Yeah. 20 MR. SHAVER: I support the inclusion of tribes 21 in the first sentence due to the similarities to local 22 and environmental justice concerns. Tribal governments 23 are locally based in the community, and they do have a 24 environmental justice issues due to disparities. 25 However, I think the second sentence lacks</p> <p style="text-align: right;">Page 79</p>	<p>1 second with the notion that the tribes have an important 2 role in the decision making structure and should be 3 included. 4 MR. SHAVER: That would be very supportive. 5 And if you could provide me any updates on that by April 6 24th, the 52 tribes of central California have asked me 7 to update them at their budget meeting. And I could 8 take this language to them and have the tribal leaders 9 of the 52 tribes have a chance to review that and 10 comment on that. 11 CHAIRMAN MADIGAN: Stakeholder will be defined 12 to very clearly identify and include tribal 13 participation. 14 VICE CHAIR McPEAK: And the -- 15 CHAIRMAN MADIGAN: You can take that to them. 16 All right. 17 VICE CHAIR McPEAK: All I was going to say, 18 this afternoon is going to be a much more full 19 discussion on governance. We hope that there will be a 20 recommendation that will include that -- 21 CHAIRMAN MADIGAN: Yeah. 22 VICE CHAIR McPEAK: -- in the preferred 23 alternative. We weren't trying to duplicate that agenda 24 item or your work. 25 CHAIRMAN MADIGAN: Okay. Brenda.</p> <p style="text-align: right;">Page 81</p>

<p>1 MS. JAHNS-SOUTHWICK: Thank you. I just --</p> <p>2 with respect to transparency on the participation with</p> <p>3 tribes, local, and environmental justice interests, we</p> <p>4 would just like to emphasize that participation in the</p> <p>5 decision making process should mean helping to shape</p> <p>6 that process, not just be providing comments that then</p> <p>7 go on to get ignored. And it should not mean being told</p> <p>8 what to do with implementation phase, but feeling like</p> <p>9 you had nothing to do with how that implementation phase</p> <p>10 looks, so --</p> <p>11 CHAIRMAN MADIGAN: Fair enough.</p> <p>12 MS. JAHNS-SOUTHWICK: Thank you.</p> <p>13 CHAIRMAN MADIGAN: Thank you. All right.</p> <p>14 Olene, take the next one. Hap.</p> <p>15 MR. DUNNING: Well, I think this is a hot front</p> <p>16 issue for many people involved with CALFED. And I just</p> <p>17 want to say it seems to me there are two critical</p> <p>18 questions that have to be explored with regard to the</p> <p>19 storage and what it says here about reaching decisions</p> <p>20 in stage one regarding storage. One is how those</p> <p>21 decisions are reached, and the other is when they're</p> <p>22 reached. I want to focus on the how, and maybe others</p> <p>23 will speak to the when, and how this fits with the</p> <p>24 staged decision making that was referred to before.</p> <p>25 On the how, we, in our letter, had strongly</p> <p style="text-align: right;">Page 82</p>	<p>1 MR. DUNNING: Well, that's good, but shouldn't</p> <p>2 it be reflected somehow in the PPA? Isn't this an</p> <p>3 important principle that ought to be in our main</p> <p>4 document?</p> <p>5 EXECUTIVE DIRECTOR RITCHIE: I guess I don't</p> <p>6 have a particular recommendation on that. I think those</p> <p>7 are issues that we have to answer to get permits. So</p> <p>8 it's a matter of law regardless, I think.</p> <p>9 CHAIRMAN MADIGAN: I have no problem with the</p> <p>10 idea. And I doubt that Sunne does. I'll talk to her in</p> <p>11 a minute.</p> <p>12 Okay. Richard.</p> <p>13 MR. IZMIRIAN: I take it this bullet refers to</p> <p>14 the engineering studies and environmental studies that</p> <p>15 are involved in this decision. But there is nothing in</p> <p>16 here about linkages and triggers to make this decision</p> <p>17 happen. Is there any anticipation that a trigger can be</p> <p>18 pulled in the time stage of phase one? And also, on</p> <p>19 the -- on bullet eight, that's -- that decision looks</p> <p>20 rather -- rather definite, that a decision must be</p> <p>21 reached in stage one, where in bullet eight, it talks</p> <p>22 about a goal of reaching a decision. If a decision</p> <p>23 isn't made, then what happens? Presumably, if the</p> <p>24 information isn't there, a decision can't be made. And</p> <p>25 I just can't believe that in the time allotted that the</p> <p style="text-align: right;">Page 84</p>
<p>1 urged that somewhere attention be paid to economics and</p> <p>2 the use of economic criteria in evaluating the storage</p> <p>3 possibilities, and also to looking carefully at impacts</p> <p>4 and mitigation. And maybe this is assumed somehow, but</p> <p>5 it doesn't seem to be stated anywhere in the PPA that we</p> <p>6 have. It doesn't have to be in this particular bullet,</p> <p>7 Mike, but I think it should be someplace.</p> <p>8 So maybe Steve can tell us where it's addressed</p> <p>9 here, and maybe I've missed it in the document. But I</p> <p>10 think that is a concern as well as the timing of the</p> <p>11 storage decision.</p> <p>12 EXECUTIVE DIRECTOR RITCHIE: Yeah. I think</p> <p>13 those items are -- we're trying to address those items</p> <p>14 in the integrated -- the storage investigation, the</p> <p>15 fairly large-scale effort to deal with the storage issue</p> <p>16 and all aspects of it. We went through and did, for</p> <p>17 example, the reports that were concluded at the end of</p> <p>18 December and, say, relative to economic factors. One of</p> <p>19 the reports dealt with flows in the Sacramento River,</p> <p>20 which indicated that river health was related to keeping</p> <p>21 extremely high flows in the river, and that the best</p> <p>22 opportunity for diversions actually existed in the mid</p> <p>23 range as opposed to shaving the peaks. So I think we</p> <p>24 are trying to address those issues to make sure they are</p> <p>25 dealt with as decision come upon us.</p> <p style="text-align: right;">Page 83</p>	<p>1 evidence can be brought forward to justify a decision.</p> <p>2 CHAIRMAN MADIGAN: All right. Thank you. Tom,</p> <p>3 and then Byron, and then Mike.</p> <p>4 MR. GRAFF: I want to echo the comments that</p> <p>5 are already made on this, but bring in another couple</p> <p>6 under the table. It doesn't say to be evaluated. It</p> <p>7 says to be planned and engineered. So the implication</p> <p>8 is that whatever comes forward in June, according to</p> <p>9 Steve Ritchie's comments earlier today, that's when this</p> <p>10 is all going to happen. There will basically be a</p> <p>11 commitment under this formulation to whatever projects</p> <p>12 those state and federal leaders and others come up with.</p> <p>13 So I would object to that.</p> <p>14 And then I guess it would be nice to know, I</p> <p>15 mean, Steve did say in his Executive Director's report</p> <p>16 that they had been discussing storage in April. Do we</p> <p>17 know what those facilities are going to be, which ones?</p> <p>18 CHAIRMAN MADIGAN: Do you have anything to</p> <p>19 share with us?</p> <p>20 EXECUTIVE DIRECTOR RITCHIE: The group that</p> <p>21 discussed, you know, among the storage options, I think</p> <p>22 we already have the surface side narrowed down from 52</p> <p>23 sites to 12, and also moving forward with groundwater</p> <p>24 storage. I think out of that set, the hope is that by</p> <p>25 June we will be able to narrow that list down even</p> <p style="text-align: right;">Page 85</p>

<p>1 further, so that it's a limited number of defined 2 projects that will be pursued as opposed to a vague 3 commitment on a large number of projects. 4 MR. GRAFF: But the idea -- and excuse me. The 5 idea is indeed to precommit the, say, federal 6 governments to support of whatever projects come out? 7 CHAIRMAN MADIGAN: Yeah. It is embedded in the 8 recommendation that Sunne and I have put together that 9 the balance in this, as we gathered it from your own 10 comments as a group, as well as our own years around 11 here, is that -- and I think this comes as a surprise to 12 absolutely nobody in the room, but the -- but the 13 trade-off for assuring the kinds of flows that result in 14 the restoration, the recovery of endangered species, is 15 balanced by a device to ensure adequate water supplies 16 for urban areas. And the recommendation is storage as 17 opposed to an isolated facility in terms of what we have 18 put together. I mean, there should be no mystery in 19 anybody's mind about that, and I doubt that there is. 20 MR. GRAFF: Mike, may I follow up? 21 CHAIRMAN MADIGAN: Yeah. Sure. 22 MR. GRAFF: Do you have specific storage 23 facilities in mind? Does Sunne? 24 CHAIRMAN MADIGAN: Sure. Does that mean that 25 those are the ones that are going to come out of the</p> <p style="text-align: right;">Page 86</p>	<p>1 will come out of the process. And we support the fact 2 that there will be storage options that come out of it. 3 And I have Byron, then I have Mike Stearns, and 4 then Alex. 5 MR. BUCK: Yeah. Let me indicate my strong 6 support for this, and then perhaps we should even be 7 strengthening it. I agree with the notion it should be 8 beyond just a goal of reaching decisions. We should 9 reach decisions on this. The fundamental reality of 10 what the water community is looking at in stage one is 11 less reliability, less water on the system, and less 12 quality. That's where the trends are going. That is 13 not what the CALFED objectives are saying we're supposed 14 to do. But with what's in the package now, with the way 15 decisions are structured, we will suffer more water 16 losses and we will suffer degradation and quality. 17 If the December episode didn't prove that, 18 what's brewing right now in the operations area will 19 within the next few months. It is critical we get to 20 this. We've got to get real about this. We've got 20 21 million people coming into this state. If we're going 22 to have a balanced solution, if we're going to provide 23 for the environmental flows, we've got to do these 24 things. 25 In particular, on the Hood diversion, it</p> <p style="text-align: right;">Page 88</p>
<p>1 state/federal negotiations? I don't know. I mean, what 2 do I like? I like raising Shasta, I like sites, I like 3 in-Delta storage, and I like Los Vaqueros. What do you 4 like? 5 MR. GRAFF: I could maybe find a groundwater 6 storage project that I would go for if the beneficiaries 7 paid for it. I don't know if Sunne has got the same 8 list. She didn't hear the question. 9 VICE CHAIR McPEAK: I'm sorry. 10 MR. GRAFF: No, that's okay. You were out of 11 the room. We were focusing on the specific storage 12 facilities aspect of this. And I asked Steve Ritchie 13 whether the state and federal negotiators had -- were 14 ready to commit to specific storage facilities, because 15 that language up there doesn't say to be evaluated, it 16 says to be planned and engineered. And then we got 17 into, you know, whether you two were going to endorse 18 specific storage facilities. 19 CHAIRMAN MADIGAN: No. Our recommendation does 20 not endorse specific storage. I mean, those -- you are 21 as aware at least as we are of the conversations that 22 are taking place and what items are being discussed. 23 But our recommendation is not to predetermine those 24 storage options which come out of the process, but 25 rather to say that there will be storage options that</p> <p style="text-align: right;">Page 87</p>	<p>1 doesn't necessarily have to be a Hood diversion, it has 2 to be that or an equivalent. And that is simply 3 replacing the function of the Delta cross-channel which 4 has been essentially taken away from us and has caused 5 water quality to degrade. So we're not actually talking 6 about great improvements here, we're just trying to 7 tread water. We're trying to hold even for the stage 8 one so we can do the other things that eventually get us 9 on a trend towards higher water quality. So this is 10 absolutely imperative that we start getting real about 11 these things. 12 CHAIRMAN MADIGAN: Mike. 13 MR. STEARNS: Thank you. Forgive me, I 14 probably am asking a question about conveyance 15 facilities, why that was crossed out. But it apparently 16 was addressed at a later bullet. Is that the reason why 17 it was crossed out of this paragraph? 18 MS. LAYCHAK: Yes. 19 CHAIRMAN MADIGAN: Yeah. 20 MS. LAYCHAK: Yes. 21 CHAIRMAN MADIGAN: Okay. Alex. 22 MR. HILDEBRAND: I just want to point out that 23 the process relative to storage and conveyance and the 24 Hood diversion is addressed in the preamble. It comes 25 along a page or two further down the line there.</p> <p style="text-align: right;">Page 89</p>

<p>1 CHAIRMAN MADIGAN: Yes. I have Bob Raab, and 2 then I have Steve Zapoticzny, and Steve Hall, and then 3 Roberta, and then Fran. 4 MS. BORGONOVO: Fran goes first. 5 CHAIRMAN MADIGAN: Fran first, and then 6 Roberta. Hey, I'm nothing if not accommodating. 7 Okay. Bob. 8 MR. RAAB: Well, the reasons that I've heard 9 given for new surface storage just now are no different 10 than the reasons I heard given in 1980. And I wondered 11 just how we possibly have survived in the intervening 20 12 years in terms of water supply for farmers and for our 13 cities. There was a scenario put out by -- 14 CHAIRMAN MADIGAN: Go ahead. 15 MR. RAAB: Did I miss something good there? 16 CHAIRMAN MADIGAN: Yeah, you did. 17 VICE CHAIR McPEAK: I think we've survived 18 because God's been good to us. 19 MR. RAAB: Well, that depends. You mean 20 droughts are good for us? I mean, that -- 21 VICE CHAIR McPEAK: No, we just got lucky. I 22 don't know. I'm sorry. 23 MR. RAAB: Well, anyhow. There is a scenario 24 that was put out by the public interest groups, a 25 document that showed a blueprint for saving two million</p> <p style="text-align: right;">Page 90</p>	<p>1 Hood, but it has to be something. We have really got to 2 get moving on this. 3 And I agree with Sunne. I think that we have 4 been lucky. We -- you know, all the -- all during this 5 time that BDAC has been involved, mother nature has been 6 very kind to us. Thank God. 7 CHAIRMAN MADIGAN: Sunne. 8 VICE CHAIR McPEAK: I think Steve is first. I 9 just want to be on the list. 10 CHAIRMAN MADIGAN: Okay. Steve. 11 MR. HALL: You probably intended in the first 12 statement, but I think it should be specifically and 13 separately stated, that the PPA should provide for a 14 process, a specific process, to obtain approval from 15 regulatory agencies under section 404 of the Clean Water 16 Act for those projects that are needed to meet the 17 CALFED programmatic goals. I think that should be a 18 separate statement. And I'll give that to Eugenia. 19 On the second statement, I agree with what 20 Byron said, and I would go further. It doesn't have to 21 be Hood. It -- we do need, in order to replace the 22 cross-channel which we have largely lost, a screened 23 diversion on the main stem of the Sacramento River. We 24 have gone around and around this conveyance issue in 25 CALFED, and not just here, but elsewhere, and we keep</p> <p style="text-align: right;">Page 92</p>
<p>1 acre feet of water in the next 20 years without doing 2 any -- doing underground storage, but not surface water 3 storage. And it seems to me that the -- some 4 consideration should have been given to the 5 possibilities of efficient water use and the other -- 6 reclamation and the other good things that could be done 7 if there was not better reasons for not doing them on 8 the part of certain interests. And I just would not 9 support anything in stage one. I'm not saying never, 10 but not in stage one. I would support groundwater 11 storage, but nothing like sites or a -- 12 CHAIRMAN MADIGAN: Okay. 13 MR. RAAB: -- raising Shasta. 14 CHAIRMAN MADIGAN: Steve. 15 MR. ZAPOTICZNY: Our initial reaction to 16 reaching decisions, I think, was similar to what Byron 17 just said. And I just would like to say we second 18 exactly what Byron said. We're losing -- water quality 19 is going downhill, water reliability has gone downhill, 20 and I think we really have to get real on seven and 21 eight. We have to identify and make things happen 22 during stage one. No fooling around. And we agree with 23 the Hood diversion. Actually, we think it should be 24 done, and not just reach -- you know, reach a decision 25 and move out. And maybe as Byron said, maybe it's not</p> <p style="text-align: right;">Page 91</p>	<p>1 postponing the decision. And we took the best technical 2 solution according to CALFED off the table for purely 3 political reasons. And the water community will not 4 support any document that goes forward without a default 5 decision on a screened diversion on the main stem of the 6 Sacramento River. You don't have to call it Hood. I 7 recommend you don't call it Hood. It doesn't have to be 8 a Hood. But it has got to be somewhere in that 9 vicinity. If we can figure out how to screen the 10 cross-channel, we would be happy to do that. 11 But I would strongly recommend that this -- 12 that this document include a default decision to -- and 13 I would word it like a screened diversion on the 14 Sacramento River unless prior to a certain date, and I 15 would say January 1, 2003, an alternative is developed 16 that will provide equivalent benefits for fish, water 17 supply, and water quality. In other words, if you don't 18 make a decision that you have a functional equivalent by 19 2003, you build it. 20 And, frankly, short of that, I don't see how 21 the water community can once again be finessed by 22 saying, well, we're going to decide later on that. 23 VICE CHAIR McPEAK: Am I next on the list? 24 CHAIRMAN MADIGAN: No, I've got Fran, and then 25 Roberta. Fran.</p> <p style="text-align: right;">Page 93</p>

1 MS. SPIVY-WEBER: Actually, Steve may be moving
2 in the right direction, perhaps not far enough. But I
3 think, in phased decision making, that is the point,
4 that at some point in the -- that you do gather data and
5 you have information on which you make a decision in the
6 future. I think 2003 -- I'm not sure -- I don't know,
7 quite frankly, if there will be sufficient data to
8 make -- I think I would resist putting a specific date,
9 that short of a specific date. So -- but that is the
10 point of phased decision making is that -- is that at
11 the end of phase -- I had understood it that at the end
12 of phase one we would be making these decisions, we
13 would be gathering data to make those decisions. And
14 part of the -- the question about Hood specifically
15 has -- was, at the very beginning, based on a water --
16 on some water quality assumptions that EPA last summer
17 challenged as -- that they were good assumptions. Those
18 assumptions have been questioned. There may be some --
19 there are a lot of uncertainties about the future in
20 terms of water quality. So deciding to do something
21 with Hood at this point based those earlier assumptions
22 is just not a good -- a good reason for moving forward.
23 In December, when you had the water quality
24 problem which was -- which was quite serious, it was my
25 understanding that -- that there could have been at that

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1 time some operational changes in the way in which the
2 cross-channel was -- was used that would have reduced or
3 possibly eliminated the water quality problems. And
4 that's a much cheaper approach, if that is in fact true.
5 And I got this from some of the water managers, that
6 rather than having to build a new facility.
7 So I guess, I think, phased decision making,
8 gathering data is going to be the way to satisfy those
9 of us who -- who -- as someone had mentioned earlier,
10 resist this move that surface storage is the only way to
11 go. There just doesn't seem in -- you know, my gut
12 reaction is have we truly come to that conclusion? Do
13 we have enough data to do so? It's just -- it is a gut
14 reaction. And we need more -- more experience with some
15 of the programs, really fantastic programs, that are
16 being put forward.

17 CHAIRMAN MADIGAN: Thank you. Roberta.

18 MS. BORGONOVO: I just want to be on record in
19 accordance with the letter that many of us signed that
20 these two bullets, there is certainly not an agreement
21 that there is consensus on that from our point of view.
22 I mean, that's no surprise. I think that, again, part
23 of the problem is there's been this link between the
24 necessity for ecosystem flows directly to storage. And
25 there is, again, a disagreement on what the demands will

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1 be in the future. I go back to what Fran just said. I,
2 myself, really, I think, could be trusted to be in a
3 process for seven years, to really look at the data, to
4 look at the decision making process, and after the end
5 of that period of time, if the emphasis on the
6 nonstructural alternatives don't turn out the way we
7 think, then you go back and you evaluate them, and
8 that's -- you put all of the economic criteria into
9 play. I think that when the state has just passed four
10 billion dollars of public money that will go to address
11 all of these issues, I think I still have the list that
12 ACWA put out on the water supply reliability benefits
13 from those bonds, that I don't think users have been
14 left with nothing.

15 So I would hope that we would take a look at
16 the way the bond money was put out there. There isn't
17 storage or conveyance in there, but there is the sense
18 that you will begin to solve a lot of the problems. So
19 I really -- I, myself, believe that money into the
20 ecosystem restoration program, into the water use
21 efficiency, transfers, is as appropriate, the watershed
22 management issues that are out there, I really think it
23 will help us solve the problem. I don't know how else
24 we will be able to resolve our differences if we don't
25 go into phased decision making. And, certainly,

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1 adaptive management was one of the first concepts to
2 come out of this program. And I really like that, and
3 that just says phased decision making to me.

4 CHAIRMAN MADIGAN: Okay. Thank you. Sunne.
5 Sunne, and then Alex.

6 VICE CHAIR McPEAK: When I first raised my hand
7 to speak it was to accept the blame for the language
8 that is up there and to defend the intent. Because
9 those words are our -- ones I submitted in the process,
10 and probably didn't craft them as artfully as they could
11 have been. But I want to suggest the dialogue that we
12 just had explains the wisdom in those words. This is
13 another defining issue, because you have to sort of
14 decide are we presuming there's going to be a need for
15 facilities, storage and conveyance, or not, and surface
16 storage along with groundwater storage. I don't think
17 you can optimize the groundwater storage without the
18 surface storage. But that's -- this is a defining
19 issue. And so we're trying to get the sense of where
20 the group is.

21 And there has been many ways in which this has
22 been addressed in the past by BDAC. There was the
23 terminology onramps and offramps that had been crafted
24 at one time. And offramp meant you assumed it was in,
25 and if you found you didn't need it, you took it off.

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25 (Pages 94 to 97)

<p>1 And onramp was you presumed you might need it, but it 2 wasn't in, and you had a way in. This storage has been 3 an offramp issue for a long time in this phased decision 4 making. We've already gone another five years. So it 5 is a defining issue.</p> <p>6 Even those who are more adamant about they want 7 to presume, go to construction, have now acknowledged 8 there's some more work to be done. When Tom asked you 9 which facilities today, you know, a lot of work is spent 10 on, we've got a lot more information about what sites, 11 which locations might actually work. I'm pretty 12 encouraged that there's going to be some workable sites. 13 I can't tell you exactly the final conclusion, but I 14 think we should be presuming that there is a need for 15 the facilities, and that's why it's written this way. 16 Not being as smart as Steve Hall about all of the 17 regulations permitting --</p> <p>18 MR. HALL: Wait. I thought I was the stupid 19 one?</p> <p>20 VICE CHAIR McPEAK: You are at times. You are 21 at times. You are. However, I don't really tell you I 22 never cease to be amazed at my own stupidity and 23 naivete. So I'm the one who, you know, is constantly 24 learning in all of this.</p> <p>25 And but the intent with seven and eight, let me</p> <p style="text-align: right;">Page 98</p>	<p>1 to stage one. But functional equivalency is a far 2 better approach than adamancy on a particular facility. 3 So that's a great substitute.</p> <p>4 CHAIRMAN MADIGAN: You know, we are in one of 5 those defining moments. And it is interesting. And I 6 hope everybody around here, as we have these 7 conversations, is taking the time to smell the roses. 8 Because the public process is a really interesting one, 9 and you are all active participants in it. And this 10 is -- this is no bad thing. It is interesting that we 11 are at the point now where there are a group of people, 12 there is a group of people here, who are willing to make 13 the argument that we don't know enough about outflow and 14 inflow yet to say that we should have those sorts of 15 guarantees, but we do know enough to go ahead with 16 storage. And on the other side, we have a group of 17 people who are willing to say we don't know enough about 18 storage yet to say that we should be going forward with 19 that, but we do know enough to say that we need to have 20 guaranteed inflows and outflows for fish.</p> <p>21 We are -- I mean, some -- you can put two 22 together, but those aren't the combinations that work. 23 You can either say that we don't have enough information 24 for anything yet, and we're simply going to postpone 25 everything, or you can say now we have been sitting</p> <p style="text-align: right;">Page 100</p>
<p>1 take them separately, on storage, is to -- is to go 2 into, however we choose to use those words, a preferred 3 alternative with the assertion that we conclude we are 4 going to need additional storage in order to achieve the 5 objectives of ecosystem restoration, supply reliability, 6 which includes sufficient, and water quality. We're 7 going to need that. We have some more work to be done, 8 and we're not going to defer that decision to the end of 9 stage one. That's why I wanted to have this dialogue 10 about phased decision making versus adaptive management.</p> <p>11 Secondly, that not only will we make that 12 presumption, we're going to try our damndest to get to 13 permitting, including the 404 permit, whatever Steve had 14 to say, and actually starting construction.</p> <p>15 Now, we're going to find out some additional 16 information as we move to those decisions in stage one, 17 so we all have to be open to learning. That's the point 18 of the process. And that's why it is -- suggests some 19 more process that has to go on in stage one in order to 20 get to that point. On Hood, I think the wording that 21 was introduced by Mr. Hall is far better. But 24, 48 22 hours ago, we had a whole lot of folks who were just 23 adamant about Hood was the answer, and you better say 24 Hood or it's not good enough. I thought it was a big 25 deal taking the movement of that decision from stage two</p> <p style="text-align: right;">Page 99</p>	<p>1 around here for about seven years now, and we do have a 2 sense that if this deal is ever going to get done at any 3 level and whatever set of negotiations are going to be 4 held, yeah, sure enough there are going to be some 5 guaranteed outflows and there's going to be some storage 6 in it. And I think what Sunne and I have put forward to 7 you is the latter.</p> <p>8 VICE CHAIR McPEAK: I want to associate myself 9 with your comments.</p> <p>10 CHAIRMAN MADIGAN: Thank you. Hap.</p> <p>11 MR. DUNNING: Mike, isn't making a specific 12 reference on something like Hood quite inconsistent with 13 the idea of a programmatic document?</p> <p>14 CHAIRMAN MADIGAN: And that's why Sunne said 15 that Steve's language is probably better than the 16 language that we put up there.</p> <p>17 MR. DUNNING: Okay.</p> <p>18 CHAIRMAN MADIGAN: Yeah. Okay? Alex, you are 19 next.</p> <p>20 MR. HILDEBRAND: I want to urge that we move 21 past these two bullets and the next two until we've 22 discussed the corresponding bullets and the preamble. 23 Because they address how you get at these questions.</p> <p>24 CHAIRMAN MADIGAN: Okay. Thank you. All 25 right. Let's take the next one.</p> <p style="text-align: right;">Page 101</p>

1 MR. HILDEBRAND: I was proposing that we skip
2 this one and the one after this, and go back to these
3 when we look at the corresponding ones and the preamble.
4 Because we are arguing about how you arrive at these
5 decisions, and the preamble addresses that.

6 CHAIRMAN MADIGAN: Actually, we're probably --
7 we may even wind up taking some things in the preamble
8 and putting it into bullets when we finally get there,
9 Alex. If you'll just forgive me one small extravagance
10 of the Chair, I would like to stay with the program.
11 Because we're kind of getting there on this thing, and I
12 will bear in mind your cautions in terms of the
13 preamble.

14 Byron.

15 MR. BUCK: I would just like to make a point
16 that kind of links the decision on a Hood diversion or
17 equivalent with this bullet. The way to make a
18 through-Delta conveyance work is to have something that
19 replaces the function of the Delta cross-channel. If
20 you don't do that, you are destined to build an isolated
21 facility because we simply cannot make Delta
22 conveyance -- a through-Delta system work for water
23 quality and supply in the way we're going to need to.
24 So the two are definitely linked. I think a lot of
25 people have looked at the Hood diversion as the camel's

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1 nose in the tent of the peripheral canal. It is exactly
2 the opposite. It is the way you make a through-Delta
3 system work.

4 MR. HILDEBRAND: I agree that that may be the
5 case, but I don't think we're quite there yet.

6 CHAIRMAN MADIGAN: Okay. Number ten. Steve.

7 MR. HALL: Yeah. Can we go back to nine for a
8 minute? Sorry.

9 CHAIRMAN MADIGAN: Sure.

10 MR. HALL: The seven to ten years is, I think,
11 inconsistent with what we have been saying up until now.
12 I don't think it's got to be shorter. I would just
13 strike that, for example, seven to ten years, and
14 would -- would respectfully suggest that you also need
15 to determine, through peer-reviewed science, whether its
16 operation meets fishery, water supply, and water quality
17 objectives.

18 CHAIRMAN MADIGAN: Thank you. Sunne.

19 VICE CHAIR McPEAK: Certainly the peer-reviewed
20 science, all of this has to be -- we've got to live and
21 die by the science, and we've got to get to truth. So
22 that -- that is a -- an important thing to keep putting
23 in front of all of us. This one and the next one I,
24 too, wrote, so again, I want to accept the blame and
25 defend the intent. It's because there's a -- the

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1 sensing that -- the pullback, going back to my gut, we
2 haven't been ever really clear about is that honesty in
3 optimizing through-Delta means more than just let's do
4 something, and then immediately go to the isolated
5 component of the dual facility. You have to be able to,
6 if you're going to get true science, have enough of an
7 experience to say whether or not this works. When
8 people say what does the word optimize mean, I'm trying
9 to define it. I'm trying to tell you what I have in
10 mind, because I'm going to be back in everyone's face if
11 you're not going to be honest about the time frame it's
12 going to take.

13 So I don't want to sit across from the table
14 and say, you know, wink, wink, wink, we're going to go
15 with optimize, but that really means we're just going to
16 let you guys fool around for three years and we're
17 coming back with a big ditch on the other side. No.

18 MR. HALL: Well, Sunne, --

19 VICE CHAIR McPEAK: But excuse me, let me
20 finish.

21 MR. HALL: Sure.

22 VICE CHAIR McPEAK: Because the next one says
23 get ready if we're not able to meet those objectives
24 according to science through optimizing. And that is
25 a -- an important link as well. I was going to look at

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1 Byron. He's not there anymore. But it's an important
2 companion piece to improving conveyance.

3 MR. HALL: On the one hand you say that there
4 is going to be -- what happened? Oh, can we go back to
5 nine? On the one hand, you say you're going to reach
6 agreement on the time table.

7 VICE CHAIR McPEAK: Uh-huh.

8 MR. HALL: Well, it sounds like you already
9 have. You have agreed. You have decided it's going to
10 be seven to ten years.

11 VICE CHAIR McPEAK: No. No. It's a time table
12 for getting it done. The improvements -- there are two
13 different time tables, Steve, that I was trying to
14 reference, and it might be confusing. But just to
15 explain, it means, okay, if we say optimize, we got to
16 start doing things. And what is that? That includes
17 fish screens, that includes widening, it includes,
18 perhaps, the functional equivalent of a screened
19 diversion, that kind of stuff.

20 MR. HALL: The problem -- I mean, I understand
21 the goal is to get a representative number of water
22 years. But you are -- you are now, by the time you've
23 put that stuff in place and gone ten years, you're 15,
24 20 years out.

25 VICE CHAIR McPEAK: If you delay on the front

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<p>1 end, that's right. That's why the first time table had 2 better be clear.</p> <p>3 MR. HALL: I mean, you know, Steve Ritchie, 4 correct me if I'm wrong. But we're not going to put 5 this stuff in place in a day. It's going to take 6 several years to get it in place, and then you're going 7 to operate it for up to ten years. You -- you're 20 8 years from now.</p> <p>9 VICE CHAIR McPEAK: Hey, if it's working -- 10 how -- what are you suggesting, Steve? So let me ask 11 that.</p> <p>12 MR. HALL: Well, what I'm suggesting is you 13 could have it not be working for seven to ten years. 14 And you will -- and, you know, I kind of liked your idea 15 earlier, and I think it should be applied in both. You 16 reach agreement on the time table for optimizing 17 through-Delta, and then you reach agreement on how long 18 you need to operate it in order to know whether it's 19 working or not. You may be able to decide within 20 three -- I just -- I don't think there's any -- any 21 point in prescribing the number of years. And I know 22 you're not intending to prescribe. You're saying, for 23 example. But I don't think anybody would conclude other 24 than, well, it's got to be seven to ten years, I mean, 25 if you read that.</p> <p style="text-align: right;">Page 106</p>	<p>1 some money in something we call a through-Delta 2 conveyance system, and it's a sham because we're really 3 going to build the isolated. How do you say that in a 4 word? Sincere seemed like a decent effort, but maybe --</p> <p>5 VICE CHAIR McPEAK: Genuine and honest, I like. 6 CHAIRMAN MADIGAN: Genuine and honest, sure, 7 also good words. 8 Alex.</p> <p>9 MR. HILDEBRAND: The need for that stems from 10 the perception in the Delta that the plan, as it now 11 stands, is disaster for everybody, including the Delta, 12 and that they suspect it was designed that way to ensure 13 that it would fail.</p> <p>14 CHAIRMAN MADIGAN: Right. 15 VICE CHAIR McPEAK: Exactly right. 16 CHAIRMAN MADIGAN: And that we do not want to 17 do. We actually -- the intent here is that we want the 18 through-Delta program to succeed. That's also explicit. 19 That should be stated up front in this thing. And that 20 is a concession on the part of some of us. But it's 21 embedded in this package of recommendations. 22 Okay. I'm going to take public comment. I 23 have a series of cards here. I'm going to start with 24 Betsy Reifsnider from the Friends of the River. Betsy? 25 You would be on. Well, okay. All right. That's fine.</p> <p style="text-align: right;">Page 108</p>
<p>1 CHAIRMAN MADIGAN: All right. I understand 2 your point.</p> <p>3 MR. HALL: Thanks.</p> <p>4 CHAIRMAN MADIGAN: Okay. Let's go on to ten. 5 And then after ten, we will break. I am -- I have got a 6 number of requests for speakers. We will take lunch, 7 and we will come back to the remaining items. So ten. 8 This is what the conversation we just had. Okay. I am 9 going to stop on ten.</p> <p>10 I'm sorry. Excuse me. Steve.</p> <p>11 MR. ZAPOTICZNY: What exactly do we mean by 12 sincere effort? What did you and Sunne mean?</p> <p>13 VICE CHAIR McPEAK: I meant the one we just 14 abated. I don't know -- I don't know what words to use 15 here so that the optimizing --</p> <p>16 CHAIRMAN MADIGAN: Genuine and honest. 17 VICE CHAIR McPEAK: -- the through-Delta isn't 18 a sham.</p> <p>19 CHAIRMAN MADIGAN: Yeah, genuine and honest. I 20 mean, the intent here is to give the through-Delta 21 effort its best shot. That's what the intent is. And 22 if there's a better way to say it than that -- I mean, 23 the intent is, on the one hand, to simply stall off a 24 decision on the isolated facility. The intent, on the 25 other hand, is to make sure that we're just not throwing</p> <p style="text-align: right;">Page 107</p>	<p>1 MR. STORK: Yeah, my name is 2 Betsy Reifsnider and I'm from the Friends of the River. 3 No, actually, my name is Ron Stork. I'm on the 4 conservation staff for Friends of the River.</p> <p>5 We had, over the last couple of weeks, we have 6 seen a number of press accounts that suggest that East 7 Bay Municiple Utility District and CALFED are pursuing a 8 regional Bay Area urban water supply approach from 9 American River diversions. This came as some surprise 10 to us. As you know, Friends of the River and many of 11 the governments in the Sacramento area have been in 12 fairly extended litigation and political and policy 13 controversies on this issue for some time. And we 14 thought this was rather relatively surprising.</p> <p>15 So we decided to stop by and say hi. Our -- 16 and, basically, alert you to the mine fields that you 17 might be about to step into, assuming that you are 18 taking this matter seriously. There is a -- a very 19 significant legal -- set of legal constraints on 20 diversions from the American River that have been 21 litigated for many years. And I am -- I'm curious if 22 you have been fully informed in these discussions by 23 East Bay MUD and other parties about them. We are also 24 taking a look at -- at your CALFED solution principles, 25 and I'll just kind of repeat those a bit here.</p> <p style="text-align: right;">Page 109</p>

1 Reduce conflicts in the system. We have been
2 litigating the EBMUD efforts for the last 30 years.
3 It's a -- I don't think that -- that your entry into
4 this matter is going to reduce conflicts. It would be
5 implementable. There are major litigation -- or sorry,
6 legal constraints on diverting water from the American
7 River. It is a state and federal wild and scenic river
8 with a public trust legal case that has not been
9 appealed by the parties that have -- that significantly
10 constrains the use of the American River, diverting from
11 the American River, in a -- so that it essentially
12 becomes unusable and unuseful for a Bay Area water
13 supply. One of the significant impediments being that
14 East Bay MUD is not allowed to transfer that water to
15 other parties would be a fairly significant impediment.
16 That your solutions will have no significant
17 redirected impacts, it's our fear that the EBMUD
18 diversions that you might be discussing will precisely
19 have that, and we have had some very subtle litigation
20 on that.
21 You also have to be concerned about where
22 you're going to store that water. Are we talking about
23 expanded reservoirs in the Bay Area? So I guess what
24 we're urging you to do, or the CALFED process to do, is
25 to, if indeed there are serious discussions on this

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1 matter going on between CALFED and EBMUD, to recognize
2 that there -- that this may not be a fruitful avenue of
3 solution approaches for CALFED. And even more
4 importantly, that a fuller range of parties be involved
5 in those discussions so that CALFED becomes fairly
6 immediately aware of some of the very significant
7 policy, legal, and political mine fields that you're
8 about to step into, assuming that you're choosing to do
9 that.

10 So thank you for hearing me. I realize you're
11 trying to get to lunch, but --

12 CHAIRMAN MADIGAN: No. No. No. Thank you
13 very much. Thank you. And I am going to call on
14 Keith DeVore next, and then I'm going to ask
15 Steve Ritchie to respond to what it is that's going on.
16 I told Sunne I was caught a little unawares by this,
17 because I hadn't been a party to these conversations.
18 And it's sort of like if you're guilty of something, you
19 would like to at least have the pleasure of the act,
20 whatever it was. And it's -- I'm not sure that I've had
21 that pleasure yet.

22 Mr. DeVore.

23 MR. DEVORE: Thank you. My name is
24 Keith DeVore and I'm recommend -- or I'm representing
25 the County of Sacramento and the City of Sacramento

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1 today in my comments. I do appreciate this opportunity.
2 And I can't go without saying that you be commended for
3 your work. I was a member and am a member of the
4 Sacramento Area Water Forum, and appreciate all of this
5 wordsmithing that you're going through right now. But
6 you're on the right track. That's great.

7 CHAIRMAN MADIGAN: Thank you.

8 MR. HALL: Don't encourage them.

9 MR. DEVORE: Don't encourage them like that?

10 Sacramento County and City has significant concerns and
11 interests in protecting the lower American River and
12 preserving the sustainability of the Delta. However, my
13 comments today will focus on the American River.

14 There are rumors of a CALFED project to divert
15 American River water in Sacramento around the Delta.
16 The apparent vehicle for this proposal is contained
17 within the BDAC recommended CALFED program element water
18 quality, and the program title is the Bay Area Regional
19 Blending Assessment. Excuse me.

20 I understand the desire for improved water
21 quality in the Bay Area and the opportunities for using
22 existing facilities to meet these needs. But a new
23 connection to the American River, if in that fact that's
24 what's being proposed, is well beyond the scope of that
25 study.

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1 As many of you know, there's a long history
2 associated with protection of the lower American River.
3 There are still unresolved questions and issues, and I
4 just want to be sure that CALFED is aware of some of
5 those issues. The Hodge Decision, which was a result of
6 many years of legal battles, the decision places many
7 restrictions on the use of the American River water by
8 East Bay MUD, including the prohibition of water sales.

9 The content of the Hodge Decision must be
10 understood and considered in full, fully considered,
11 before any alternatives like this are discussed. There
12 are also substantial comments and unresolved issues on
13 East Bay MUD supplemental water supply EIR/EIS. Those
14 comments are a matter of public record, and I would
15 encourage those involved to review those comments
16 thoroughly. Neither Sacramento County nor the City of
17 Sacramento has been included in any of the discussions
18 regarding the rumored proposal, despite the fact that
19 the American River diversion is in the heart of the city
20 and county.

21 Both the City and County of Sacramento have
22 clear -- have been clear and consistent on our continued
23 opposition to American River diversions at Nimbus above
24 Sacramento. And it's not clear whether or not CALFED is
25 considering, you know, this option. This is both a

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1 state and federally designated wild and scenic river.
2 The CALFED -- your CALFED proposal stresses
3 optimizing through-Delta conveyance, and you just went
4 through some of that discussion. In order to meet Delta
5 export water quality, ecosystem restoration, and water
6 conveyance goals, alternatives to divert water around
7 the Delta in Sacramento, which is above even other
8 discussions, is clearly -- well, before fully optimizing
9 through-Delta conveyance is inconsistent with CALFED
10 objectives. So I hope CALFED will not endorse this type
11 of rumored project.
12 Again, I thank you for your opportunity -- or
13 the opportunity to comment.
14 CHAIRMAN MADIGAN: Thank you, sir.
15 Mr. Ritchie.
16 EXECUTIVE DIRECTOR RITCHIE: Oh, sure. I, too,
17 read the press accounts with joy and rapture as to how
18 East Bay MUD would run off and do something. Basically,
19 what CALFED has done and actually has indicated back as
20 late as, originally, December 1998, that believed that
21 looking for water exchange possibilities within the
22 areas where plumbing was kind of in line for that was a
23 desirable thing. So for drinking water quality
24 improvements in the Bay Area, if you look at a map of
25 Bay Area plumbing, you see where the Mokelumne Aqueduct

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1 and the Contra Costa Canal are very close to each other.
2 They're close to the South Bay Aqueduct. The
3 Hetch Hetchy Aqueduct crosses the South Bay Aqueduct.
4 All the plumbing systems are close to each other. On
5 the other hand, none of those agencies has ever worked
6 together constructively that I can recall in my
7 lifetime. And I think that has been --
8 CHAIRMAN MADIGAN: That's your best assurance,
9 is it?
10 EXECUTIVE DIRECTOR RITCHIE: Yeah. And so --
11 CHAIRMAN MADIGAN: Not to worry then.
12 EXECUTIVE DIRECTOR RITCHIE: What CALFED has
13 said for some time is, you Bay Area folks need to get
14 together and look at are there ways that you can improve
15 water quality in the Bay Area using a combination of
16 measures. And those include a package of things,
17 increased water use efficiency, the Bay Area Regional
18 Recycling Program to increase conservation, additional
19 water treatment improvements that we're looking for
20 state funds to put into this year, plumbing
21 interconnections between those projects, the possibility
22 of storage. Los Vaqueros was mentioned earlier, and I
23 think it showed up in the newspaper articles. Los
24 Vaqueros is strategically good for a water quality
25 improvement effort there. Livermore Groundwater Basin,

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1 Calaveras Reservoir, the San Francisco system, these are
2 all things that can be used as tools to improve water
3 quality there.

4 We, actually, in this year's budget, identified
5 a small amount of money to get started on working on
6 that. And the Bay Area folks have been talking among
7 themselves. That's -- that's the extent of what CALFED
8 has put into this so far, is can we start the process of
9 going down the road of coming up with a package that
10 will work better. Given that, and then I'll say it as
11 being a Bay Area person myself, with the two preexisting
12 peripheral canals, the Mokelumne Aqueduct and the
13 Hetch Hetchy Aqueduct, they're out there, and we need to
14 deal with the fact that they're out there.

15 At the same time, as we're all aware, East Bay
16 MUD has been pursuing the American River project for a
17 long period of time. So I think what they have done is
18 said, ah-ha, well, if we -- if they do this Bay Area
19 project in CALFED, our project will be the solution to
20 that. We'll be the manna for that. I don't think we
21 see it that way at all. I think we see that as a
22 project that they've been working with Sacramento and
23 others on, and they've a lot of issues that they've got
24 to deal with out there. That may or may not contribute
25 to this provided that project is ever successful to move

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1 forward.
2 Where CALFED is is trying to make some
3 improvements just within the Bay Area itself. I
4 personally think that is going to be a very long and
5 arduous process because, again, those folks have not got
6 a long history of working together. So I think we're
7 just the first step of trying to get some cooperation
8 there and some improvement in combination for those
9 folks. It's not going to be easy, but CALFED is not in
10 any way -- I've -- I was -- I met with East Bay MUD once
11 where they said, gee, here is the American River project
12 we've talked about and we think it's got some
13 possibilities here to help. I said, looks interesting,
14 you know, maybe it fits in ultimately to a Bay Area
15 project.

16 That's the extent of it. CALFED has not signed
17 up to support the American River project by any means,
18 and I don't actually foresee that any time in the
19 future. East Bay MUD has a lot to do on their own at
20 this point.

21 CHAIRMAN MADIGAN: Would you do a couple of
22 things, keeping us informed of conversations as they --
23 as they go, or any determinations by CALFED as a group
24 to get involved, recognizing the -- all of the -- all of
25 the public policy issues surrounding this one? Even if

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1 it kind of isn't a CALFED program, it -- things can get
2 started awfully fast, and then we -- we would appreciate
3 you keeping --
4 EXECUTIVE DIRECTOR RITCHIE: Absolutely.
5 CHAIRMAN MADIGAN: Thank you. Byron.
6 MR. BUCK: Having both the City of Sacramento
7 and East Bay MUD as members, I think -- I feel I need to
8 enlighten -- put a little more light on this that would
9 help. Where this is coming from, recall, is that,
10 originally, the thrust in the CALFED program early on
11 was looking at an isolated facility to solve drinking
12 water quality problems and to reach the objectives
13 CALFED has adopted. We have put that on the far back
14 burner for reasons that have been previously stated.
15 One of the reasons that happened was the insistence of
16 the environmental community and others that we look at
17 exchanges and transfers to reach those goals. That's
18 what's going on here. That's part of the process. For
19 us to ultimately meet the drinking water quality
20 objectives, it's going to be a matter of enhancing the
21 through-Delta system and bringing in exchanges and
22 transfers of water into both the Bay Area and Southern
23 California. The Bay Area has a lot of different
24 potential solutions. Southern California has different
25 potential solutions for exchanges and transfers. But

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1 you're going to have to do both together.
2 What they're talking about with respect to the
3 Bay Area exchange project is very embryonic at this
4 point. It could well involve use of that facility
5 that's being -- that East Bay MUD has been pursuing.
6 But it is recognizing that that would be a project that
7 would divert at the confluence. It's recognizing a
8 project that would probably not increase in net
9 diversions. It would be -- allow exchanges of water
10 rights to Santa Clara and Alameda and others already
11 having the system, and allow it to blend with storage,
12 perhaps enlarge Los Vaqueros to make it happen. So it
13 could actually make a project that Sacramento and East
14 Bay MUD were very close to agreement on happen, because
15 there is additional money coming into the system to make
16 a project of the confluence work. So you would have all
17 that water flowing down the lower American River, and
18 you'd be able to get high quality water to the Bay Area.
19 It doesn't mean there aren't other problems
20 with it, but there are. But we got to fundamentally
21 realize we're trying to solve the problem. We've taken
22 one option pretty much off the table. We can't be
23 afraid to discuss other ones. We can't simply --
24 CHAIRMAN MADIGAN: Okay. I don't want to
25 debate it today. Thank you. Next speaker.

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1 MR. GRAFF: I have a comment on that.
2 CHAIRMAN MADIGAN: Sure. See what you did,
3 Byron.
4 MR. GRAFF: I've now heard by the Chair and
5 the -- and the Executive Director, now Mr. Buck, all
6 refer to enlarge Los Vaqueros as one of the elements
7 here. And I did bring a handout, because given where we
8 seem to be going, we have no time between now and June
9 when we can expect the state and federal officials to
10 endorse facilities that will not be evaluated
11 thereafter, but simply built. So I just wanted to point
12 that out and I will distribute it.
13 CHAIRMAN MADIGAN: Thank you. Kathryn Alcantar
14 representing the Latino Issues Forum. Yo, Torri.
15 MR. ESTRADA: Mike, I actually want to make a
16 request. I've asked several people from our coalition
17 to be here, and I was hoping that their comments would
18 be useful for discussions of the preamble. So I was
19 wondering if we could move their public comments to
20 later this afternoon.
21 CHAIRMAN MADIGAN: You got it. Would that also
22 include Michael Warburton?
23 MR. ESTRADA: Yes.
24 CHAIRMAN MADIGAN: All right.
25 VICE CHAIR McPEAK: As long as they don't mind

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1 waiting.
2 CHAIRMAN MADIGAN: No. Yeah, that's right.
3 Exactly. It certainly works for us. I have two others,
4 and let me ask -- well, I know -- no, they don't. Never
5 mind. Let's see. You're going to have to help me with
6 this. Arian Wong?
7 MS. WONG: That's Arlene Wong.
8 CHAIRMAN MADIGAN: Yes.
9 MS. WONG: And I was included in --
10 CHAIRMAN MADIGAN: Oh, I'm sorry. Thank you.
11 Okay. Great. Cliff Schulz from Kern County Water
12 Agency.
13 MR. SCHULZ: Thank you. I am Cliff Schulz. I
14 represent the Kern County Water Agency and the State
15 Water Contractors. And I got some -- a couple of
16 comments I would like to make. I think you've actually
17 done a very good job this morning in clarifying a lot of
18 the -- a lot of the issues that were raised by the draft
19 document. I want to briefly talk about, Steve Hall
20 earlier today made a recommendation for a modification
21 of the second paragraph on the draft recommendations on
22 page two that would have changed the language to -- to
23 indicate that the purpose of the recommendations was to
24 strengthen or refine the PPA so that it provides more
25 specific definition in short and long-term programs.

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<p>1 The reason we're asking for that was not only 2 some legal issues, but I think also policy issues. And 3 the policy issue that I -- is that, you know, 4 programmatic EIR/EIS is supposed to define the program. 5 And when we read that second paragraph, particularly the 6 phrase that stated that you -- that they aggressively 7 progress from now and into implementation of the CALFED 8 program on the following issues, and the purpose of that 9 progress would be lead to important future decisions on 10 the best solution alternative for the Bay-Delta 11 watershed, we felt that that was postponing the 12 determination of what the preferred program alternative 13 was into a time post ROD, and that you needed to clarify 14 that section so that what you're really asking CALFED to 15 do is get on the stick and make these decisions now so 16 they can be included in the ROD. And because that's 17 what we think is very, very important to have the matter 18 go through -- start forward into implementation. 19 The second point I wanted to raise was with 20 respect to something that we think is missing from the 21 document. And that is, as I'm sure most of you are 22 aware, we were trying to follow the negotiations, that 23 there's quite a debate over who gets the water that is 24 developed by the tools that will be put into place in -- 25 in stage one. And one of the, I thought, common</p> <p style="text-align: right;">Page 122</p>	<p>1 that -- of that provision. And I think that raises some 2 real issues. But far more seriously to me is the end of 3 that section of the preamble where it talks about the 4 likelihood of water shortages in the future and that we 5 will identify all of those shortages and the costs and 6 the yields. And then the last paragraph says, after 7 these analyses are available, there will be an open 8 process of evaluating the results to determine to what 9 degree the legislature and the electorate wish to close 10 the gap between supply and demand versus coping with the 11 consequences of future shortages. 12 That, to me, casts a pall on the entire rest of 13 the document with respect to what's going to happen with 14 respect to water supply reliability. And I hope it is 15 not CALFED's position, or BDAC's position, that we are 16 going to so defer decisions on water supply that we put 17 off until the future sometime a decision as to whether 18 we are going to enhance supply or live with the 19 ecosystem aspects of shortage. I would like to see that 20 whole section go away. All right. Thank you. 21 CHAIRMAN MADIGAN: Thank you. We are going to 22 break for lunch. Lunch for the members of the BDAC is 23 upstairs in the room where Lester's going away party 24 was. We will reconvene at 1:00 o'clock and pick up with 25 bullet number 11. Thank you.</p> <p style="text-align: right;">Page 124</p>
<p>1 understandings was that the water would be shared, that 2 the -- that the benefits of those tools, the water that 3 would be developed would be shared between water users 4 and the environment. I think that's an explicit 5 statement that ought to be included in something that 6 comes out of BDAC. Because it is my understanding that 7 there is some debate about that during these 8 negotiations, and that the fish and wildlife agencies 9 are asking for the first 400,000 acre feet of benefit to 10 come from the tools, which could very well mean that 11 water users will find themselves in the same water 12 supply situation they are today at the end of stage one. 13 So I think the concept of sharing of water supplies 14 gained by completion of projects and tools is something 15 that needs to be explicitly stated. 16 Finally, there's one aspect of the preamble, 17 which I don't know if you're going to have other time to 18 talk on -- for public comments this afternoon, but I 19 would like to comment on one element of the preamble 20 that I think needs to go away. And that is the portion 21 of the preamble that deals with water supply. And there 22 are several problems that I have with the water supply 23 portion, the first one being the suggestion that CALFED 24 is going to become the statewide developer of apparently 25 Bulletin 160, which is the way I read the first part of</p> <p style="text-align: right;">Page 123</p>	<p>1 (A lunch break was taken 2 from 12:24 p.m. to 1:08 p.m.) 3 CHAIRMAN MADIGAN: Okay. Item number 11, 4 accurately identifying water supply increases from 5 CALFED and private party actions. Questions? 6 MS. KAMEI: What were private party actions 7 referring to? 8 CHAIRMAN MADIGAN: Well, they're, in effect, 9 non-CALFED driven based to water transfer between two 10 parties. 11 CHAIRMAN MADIGAN: Stu? 12 MR. PYLE: We're talking about number 11, -- 13 CHAIRMAN MADIGAN: Yes. 14 MR. PYLE: -- identifying private party 15 actions? I think that should be part of -- it ought to 16 be just combined with five where it says establishing 17 links. I think that's all part of the same thing. 18 CHAIRMAN MADIGAN: Optimizing the links between 19 storage, water use efficiency, that one? 20 MR. PYLE: Yeah. 21 CHAIRMAN MADIGAN: And water supply increases 22 from -- well, it's -- the notion of it is that -- is 23 that one is an attempt at we all get well together. And 24 this one is more an accounting procedure, I guess. 25 MR. PYLE: Yeah. But whether it's combined</p> <p style="text-align: right;">Page 125</p>

<p>1 with or next to, because it's kind of -- it's kind of in 2 the same order as that anyway.</p> <p>3 CHAIRMAN MADIGAN: Yeah. Okay. All right. 4 Okay. Twelve, balancing competing water quality and 5 quantity needs within and outside the Delta. Lunch is 6 taking its toll. Should we take a nap.</p> <p>7 MR. PYLE: I'll give you one on that, Mike.</p> <p>8 CHAIRMAN MADIGAN: Okay. All right. I'm 9 comfortable with it, obviously, so --</p> <p>10 MR. PYLE: Number 12, combine that one with 11 number three. I think that's part of the same set of 12 issues.</p> <p>13 CHAIRMAN MADIGAN: Hap, do you have any 14 thoughts on that? Do you have any thoughts on the 15 notion that those two should be together, number three, 16 the -- whoops, I'm sorry. I'm on the wrong one. Excuse 17 me. Never mind. Never mind. Guaranteeing Delta 18 inflows and -- yeah, they should probably be next to 19 each other. That's fair. We could do that.</p> <p>20 Yeah. Richard.</p> <p>21 MR. IZMIRIAN: I'm really not sure how you can 22 make 12 actionable. The whole notion of balancing is a 23 rather vague, undefined concept.</p> <p>24 CHAIRMAN MADIGAN: It is one of the less 25 precise items on this list.</p> <p style="text-align: right;">Page 126</p>	<p>1 MR. IZMIRIAN: For instance, you know, what 2 flows are scientifically defensible for running down the 3 river for fish, and you can argue it's got to be less 4 than that for some sake of balance.</p> <p>5 CHAIRMAN MADIGAN: I think it's no great 6 surprise that a fair piece of the debate these days 7 seems to be around baseline issues, at least in terms of 8 the kinds of things that most of us -- most of us are 9 getting told. I agree with that. I don't know.</p> <p>10 Eugenia put that down as a think about it. Maybe it 11 lacks specificity. And I think that's --</p> <p>12 MS. LAYCHAK: Okay.</p> <p>13 CHAIRMAN MADIGAN: That's a fair point. Okay?</p> <p>14 MS. LAYCHAK: Regarding baseline, right, as it 15 relates --</p> <p>16 CHAIRMAN MADIGAN: Regarding just the whole 17 statement there. I mean, baseline -- baseline is going 18 to come into play --</p> <p>19 MS. LAYCHAK: Okay.</p> <p>20 CHAIRMAN MADIGAN: -- in terms of how that 21 gets -- in terms of how it gets identified. But I think 22 that the real question is that this is not a very 23 precise bullet. All right. Let's go on to 13. Yo, I'm 24 sorry. Tom.</p> <p>25 MR. GRAFF: I think Bob has something.</p> <p style="text-align: right;">Page 128</p>
<p>1 MR. IZMIRIAN: So if somebody wants to make it 2 actionable, they're going to use their own -- it just 3 looks like a mine field problem that we -- that would 4 probably be better off left out.</p> <p>5 CHAIRMAN MADIGAN: I guess this gets back to 6 some of the notions like no significant redirected 7 impacts, that you don't do things that make the Delta 8 whole at the expense of the area of origin would be one 9 obvious reason for saying it. You're right in terms of 10 it being vague though. I agree with that.</p> <p>11 MR. IZMIRIAN: What will make it balance?</p> <p>12 CHAIRMAN MADIGAN: Well, I mean, the question, 13 I think, is maybe more how are you going to determine 14 balance. I mean, clearly, if no redirected -- no 15 significant redirected impacts is a policy here, you 16 were talking about Yuba River a little bit earlier and 17 some of the issues surrounding that, and you don't 18 exacerbate the issues on the Yuba River to make sure 19 that we've got adequate, you know, flows that -- flows 20 in the Delta. But how you do that, it seems to me, is a 21 fair question. We haven't -- we haven't made that very 22 clear. And maybe -- maybe you'd say -- I don't know.</p> <p>23 MR. IZMIRIAN: People also have baseline issues 24 as well as balancing issues.</p> <p>25 CHAIRMAN MADIGAN: Oh, yeah.</p> <p style="text-align: right;">Page 127</p>	<p>1 CHAIRMAN MADIGAN: Bob. Excuse me. All right. 2 Tom, and then Bob. On 10?</p> <p>3 MR. RAAB: On 10, I was just wondering -- I 4 just wanted to go on record as no.</p> <p>5 CHAIRMAN MADIGAN: Ten is the stage one, the 6 requisite feasibility studies for the isolated 7 conveyance, provided that there is a sincere effort to 8 optimize through-Delta conveyance and other water 9 quality improvement strategies. Okay. Go.</p> <p>10 MR. RAAB: No.</p> <p>11 CHAIRMAN MADIGAN: Okay. Just a no. Okay. 12 All right. I got it.</p> <p>13 MR. GRAFF: My point was going to be a 14 little -- kind of related maybe, that it was my 15 impression in late 1998, I think this was referred to 16 earlier, that agreement was reached on a number of 17 matters, and I thought this was one. Particularly 18 between the in-Delta interests and the process that was 19 going on then between Secretary Babbitt and 20 Governor Wilson. And I don't know whether this language 21 is meant to somehow tweak that agreement or not. I did 22 notice that in Washington a couple of weeks ago, 23 Dante Nomellini testified very aggressively against 24 CALFED in a way that I hadn't really heard the Delta 25 interests do prior to that. But -- so I don't know</p> <p style="text-align: right;">Page 129</p>

<p>1 whether we're trying to redo that agreement or not.</p> <p>2 CHAIRMAN MADIGAN: Yeah. I'm sorry. Where are</p> <p>3 we? Stu.</p> <p>4 MR. PYLE: Yeah. My understanding on this</p> <p>5 addressed more in the preamble, as Alex has said</p> <p>6 earlier, that when -- when the alternative three was not</p> <p>7 selected as the preferred alternative in the final</p> <p>8 instance, there was considerable objection from many of</p> <p>9 the water interests. And my understanding of these</p> <p>10 continuing studies was kind of a the softener to that</p> <p>11 decision to assure that there are continuing studies.</p> <p>12 And I've been -- you know, Steve will recall, I keep</p> <p>13 asking him that question over and over again, why are we</p> <p>14 not pointing out that there will be continuing studies</p> <p>15 of the need for isolated facility if we do not optimize</p> <p>16 and get the best results from the through-Delta</p> <p>17 facility. Why are these continuing studies not included</p> <p>18 in stage one? And my fear was that they were being</p> <p>19 pushed off into stage two.</p> <p>20 CHAIRMAN MADIGAN: Steve.</p> <p>21 EXECUTIVE DIRECTOR RITCHIE: Yeah. I just</p> <p>22 might make a word now as between December of '98 and</p> <p>23 June of '99, that release, there were some areas where</p> <p>24 we changed the word somewhat without really feeling we</p> <p>25 were changing the intent. But, obviously, you know, we</p> <p style="text-align: right;">Page 130</p>	<p>1 CHAIRMAN MADIGAN: Okay. All right. Let's go</p> <p>2 on to 13. Hap.</p> <p>3 MR. DUNNING: In 13, in the second sentence,</p> <p>4 there's a reference to capitalizing the EWA.</p> <p>5 CHAIRMAN MADIGAN: Yes.</p> <p>6 MR. DUNNING: And then it says, and ensure that</p> <p>7 additional water is not taken from supplies through</p> <p>8 further regulatory actions. I want to register an</p> <p>9 objection to the use of the verb ensure. I don't think</p> <p>10 we can do that. Regulatory actions are taken by</p> <p>11 regulatory agencies responding to mandates of law, state</p> <p>12 and federal law. Certainly the whole idea of the</p> <p>13 nonregulatory approach in CALFED is to minimize,</p> <p>14 eventually, the situations in which those regulatory</p> <p>15 actions have to be taken. But no way can we ensure that</p> <p>16 they are not taken when the law calls for them under</p> <p>17 ESA, or whatever other statute we're talking about.</p> <p>18 CHAIRMAN MADIGAN: Okay. You understand the</p> <p>19 notion of this thing is that the reason for the creation</p> <p>20 of the environmental water account is so that we can</p> <p>21 deal with those --</p> <p>22 MR. DUNNING: If we said seek to minimize,</p> <p>23 fine. But ensure is too much.</p> <p>24 CHAIRMAN MADIGAN: Anybody. Yo, Byron.</p> <p>25 MR. BUCK: That is kind of a technical issue,</p> <p style="text-align: right;">Page 132</p>
<p>1 were mistaken, and people were concerned on the -- on</p> <p>2 the Hood issue, the word construction being there, you</p> <p>3 know, raised a lot of flags from people. Here, in</p> <p>4 December of '98, I think we actually had the words</p> <p>5 pursue feasibility studies, and then refined it, from</p> <p>6 our point of view, in the June draft that basically said</p> <p>7 pursue it, basically, on an equal power with the other</p> <p>8 things like were laid out in the water quality</p> <p>9 improvement strategy. I think many of the water user</p> <p>10 interests saw the words feasibility study disappear and</p> <p>11 thought, oh, my God, you know, they're reneging on their</p> <p>12 commitment to keep moving these things all forward</p> <p>13 together, so that should a decision become necessary in</p> <p>14 the future, we're prepared to make that decision. So I</p> <p>15 think the word feasibility studies for some reason</p> <p>16 became very critical to some people. And I don't have a</p> <p>17 strong opinion one way or the other. From my point of</p> <p>18 view, CALFED, as we laid out, we need to pursue regional</p> <p>19 strategies and water exchanges, and we need to pursue</p> <p>20 other conveyance improvements. We need to pursue water</p> <p>21 treatment. We need to pursue that whole array of things</p> <p>22 in an even-handed fashion to make sure we're achieving</p> <p>23 the water quality goals. Nothing should be left behind</p> <p>24 in that. That's where we want to be. That's</p> <p>25 conceptually, I think, what we've tried to lay out here.</p> <p style="text-align: right;">Page 131</p>	<p>1 but we are not in a -- we are in a no-jeopardy condition</p> <p>2 now. What we're talking about using the ERP and the</p> <p>3 environmental water account is to provide recovery in a</p> <p>4 balanced way. So I think we really need to reflect</p> <p>5 that. We technically don't have a jeopardy situation</p> <p>6 under the current biological opinion. We have avoided</p> <p>7 jeopardy. And what we're talking about is recovery.</p> <p>8 MS. BORGONOVO: What about seek to minimize?</p> <p>9 CHAIRMAN MADIGAN: Yeah, seek to minimize what?</p> <p>10 Seek to minimize the loss of any additional water, or</p> <p>11 seek -- actually, it isn't -- yeah, I wouldn't even</p> <p>12 think to minimize. The notion that Hap makes is that we</p> <p>13 are not in a position to ensure regulatory action. The</p> <p>14 things that we do should obviate the necessity for a</p> <p>15 regulatory action. And so maybe that's what we want to</p> <p>16 say, that the establishment and capitalization of the</p> <p>17 water account, of the environmental water account, is</p> <p>18 designed to obviate the necessity for additional</p> <p>19 regulatory actions, or something like that.</p> <p>20 MR. BUCK: In the context of recovery, you're</p> <p>21 never going to --</p> <p>22 CHAIRMAN MADIGAN: Yeah.</p> <p>23 MR. BUCK: If we do get into a jeopardy</p> <p>24 situation, nothing we're going to say changes the law.</p> <p>25 CHAIRMAN MADIGAN: Okay. No, I agree. I</p> <p style="text-align: right;">Page 133</p>

1 agree. I agree.
2 MR. BUCK: I mean, they're going to have the
3 ability to deal with jeopardy.
4 CHAIRMAN MADIGAN: Okay. Okay. Thank you.
5 MR. DUNNING: Well, but we're in a no-jeopardy
6 situation because there are biological opinions that
7 impose constraints.
8 MR. BUCK: Right.
9 CHAIRMAN MADIGAN: Alex.
10 MR. HILDEBRAND: It seems to me there may be a
11 conflict between 13 and 14.
12 CHAIRMAN MADIGAN: Okay.
13 MR. HILDEBRAND: I don't know how you're going
14 to capitalize an environmental water account at the same
15 time you provide water supply assurances for other
16 parties. Because where are they going to get the water
17 if we -- if they don't wait until we develop some new
18 water supply?
19 MR. HASSELTINE: Do you want to wrap up 13
20 first or --
21 CHAIRMAN MADIGAN: No, I want to wrap up 13
22 first, but Alex has made a point that we need to think
23 about 14 and in the light of 13. And that's a fair
24 point. Go ahead on 13.
25 Eric.

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1 MR. HASSELTINE: Well, as long as we've
2 approached the subject of 14 here in this context, I
3 just have been struck with the lack, and not quarreling
4 with the wording that's there now, but the lack of
5 clarity and the lack of substance regarding the whole
6 issue of water supply reliability in this entire
7 document. We have here the preferred program
8 alternative that's been laid out. And what we now have
9 is a group of recommendations here that we're suggesting
10 need to be incorporated into that document or the -- or
11 the document needs to be modified to reflect these
12 recommendations. But the document itself, whereas it
13 seeks -- up front it talks about the program seeking to
14 improve water supply reliability is one of the four
15 objectives, then goes on to lay out a number of programs
16 in which water supply reliability never shows up. And
17 water supply never shows up, because it's been divided
18 up into a variety of other topics. And it's never clear
19 how all of those come back together again to really
20 provide what I think most of us consider water supply
21 reliability to mean. So I think there is -- there's a
22 real void there that needs to be filled somehow. I
23 think that a number of these recommendations also
24 address water supply reliability and go to help that.
25 But I really think that a -- an explanation of exactly

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1 what we mean by water supply reliability in this entire
2 program, and what the components of it are, needs to be
3 explicitly set forth somewhere up front in this program
4 alternative. And to explain how all of these other
5 programs are combined to, in fact, accomplish that.
6 Now, in addition to that, and we're not to this yet, but
7 then it's a little bit confusing, and I'm not sure it
8 helps to clarify this at all, to address, to try to
9 address, in part, water supply in the preamble, at the
10 end of the preamble. And I -- are we going to talk
11 about the preamble?
12 CHAIRMAN MADIGAN: Yes, next.
13 MR. HASSELTINE: Okay. Then I won't go further
14 in that. I'll just make that comment now. Cliff Schulz
15 this morning was talking about that aspect of the
16 preamble. And so I just think the whole concept of
17 water supply reliability needs a fair amount of work to
18 be clarified and substantiated in this document. And
19 I --
20 CHAIRMAN MADIGAN: Right.
21 MR. HASSELTINE: You know, it's not a matter of
22 just playing with a few words either. It's a matter of
23 sort of describing exactly what we mean by that, and
24 putting in what the components of it are, you know, in a
25 more clear way than now exists.

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1 CHAIRMAN MADIGAN: All right. And I agree with
2 you, by the way. I think that we -- we have gone to
3 some pains to be explicit around here, and that is an
4 oversight and we should do something. And we will make
5 an effort at that. Okay. Good point.
6 Bob.
7 MR. RAAB: I have numerous problems with the
8 true meaning of the second sentence in 13.
9 CHAIRMAN MADIGAN: Establish and capitalize the
10 environmental water account with a water budget, and
11 ensure that additional water is not taken from supplies
12 through further regulatory actions. And we have now
13 indicated that ensure probability isn't the right word,
14 and that we are going to come up with a substitute for
15 that. Okay? And then the issues are?
16 MR. RAAB: Well, among them is the assumption
17 that there will be no water taken from, say, agriculture
18 for -- no tapping into agricultural water supply to help
19 restore the fishery. As a matter of fact, the CVPI did
20 that very thing, and you're saying that that -- nothing
21 like that is ever going to happen again. I could go on,
22 but, I mean, there are other suggestions in there
23 that -- that is such a flat statement, and allows for no
24 alternatives.
25 CHAIRMAN MADIGAN: Does it help --

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<p>1 MR. RAAB: For example, it doesn't –</p> <p>2 supposedly, if we don't do what we should be doing in</p> <p>3 the next five or ten years as far as water use</p> <p>4 efficiency, as we still have a lot of water wasted at</p> <p>5 various sectors, and assumes that we can go on wasting</p> <p>6 water, and various users in various ways, but we can't</p> <p>7 take another drop to bring back fisheries.</p> <p>8 CHAIRMAN MADIGAN: Well, okay. A part of this</p> <p>9 notion was that these things are late, that you move</p> <p>10 forward on all fronts and that, in that particular</p> <p>11 instance, that water supply efficiency is a part of</p> <p>12 moving forward. Does it help that – what was the</p> <p>13 phrase? Obviate the necessity for instead of ensure</p> <p>14 that, or something –</p> <p>15 MR. DUNNING: Seek to minimize is one and –</p> <p>16 CHAIRMAN MADIGAN: Yeah. Does it help you if</p> <p>17 you have a phrase like that? I don't know that that</p> <p>18 really answers your question, but –</p> <p>19 Sunne.</p> <p>20 VICE CHAIR McPEAK: The second sentence, I</p> <p>21 think, Bob, that you were referring to, either are the</p> <p>22 words that I submitted are pretty close to, so I'll,</p> <p>23 again, take responsibility and try to explain. And to</p> <p>24 also maybe elaborate on how I would envision this</p> <p>25 actually working to respond to the question Alex had</p> <p style="text-align: right;">Page 138</p>	<p>1 short-term and long-term, and at the same time, in the</p> <p>2 short term, say, because the word ensure, I had put into</p> <p>3 that, that if you put water into this environmental</p> <p>4 water account for the immediate future, short-term, and</p> <p>5 that, I guess, I mean stage one, we're not going to keep</p> <p>6 taking more water away. That's the issue of</p> <p>7 reliability. And in this case, for short-term,</p> <p>8 reliability does mean assurances of the amount,</p> <p>9 recognizing that there is a risk. It's not going to be</p> <p>10 sufficient if we get into a very significant low</p> <p>11 rainfall. In going forward, we're hoping for the</p> <p>12 prospect of the sufficiency meter to get moved to</p> <p>13 fulfill the definition on a reliable supply. But we</p> <p>14 also will have a moving target in terms of demand into</p> <p>15 the future that we're trying to also meet with expanded</p> <p>16 supply.</p> <p>17 So that's how I've resolved or understood the</p> <p>18 reconciliation between 13 and 14, and why it was</p> <p>19 important to be as clear or – or rigid almost about not</p> <p>20 continuing to have further regulatory takings of supply.</p> <p>21 Bob wants to respond. I'm just –</p> <p>22 CHAIRMAN MADIGAN: Okay. Well, go ahead, Bob,</p> <p>23 and then Steve Hall.</p> <p>24 MR. RAAB: I must admit, Sunne, I don't</p> <p>25 understand your answer. And that just may be me. It</p> <p style="text-align: right;">Page 140</p>
<p>1 raised about 13 and 14.</p> <p>2 The way in which the environmental water</p> <p>3 account, I am told, is to work, and I'm still trying to</p> <p>4 understand this, I'm enthusiastically for it, I want to</p> <p>5 see it done, and people keep trying to explain to me how</p> <p>6 it's going to work, okay, is that it would have both</p> <p>7 water and money. And the money part of it is a pretty</p> <p>8 important dimension to the management of the</p> <p>9 environmental water account in the near-term while we're</p> <p>10 aggressively optimizing water use efficiency.</p> <p>11 As you can envision, that if we're in the</p> <p>12 short-term doing everything on extending the current</p> <p>13 water supply or being very efficient with the current</p> <p>14 water supply, that those who save would be able to share</p> <p>15 on a market in the environmental water account is the</p> <p>16 broker, the intermediary, the mechanism, if Steve saves</p> <p>17 the water, he can go – he would be a potential customer</p> <p>18 of, seller of, whatever, client of the environmental</p> <p>19 water account, and the environment might be the</p> <p>20 beneficiary.</p> <p>21 In the short term, that's how we envision this</p> <p>22 to work, while other facilities are coming on line that</p> <p>23 gives us greater flexibility and supply, Alex. So</p> <p>24 that's how I viewed the ability for the environmental</p> <p>25 water account to be a real tool and mechanism,</p> <p style="text-align: right;">Page 139</p>	<p>1 would be fair to say that what's implicit or explicit in</p> <p>2 what you have been saying is any more water that goes to</p> <p>3 fish must be purchased?</p> <p>4 VICE CHAIR McPEAK: No. The environmental –</p> <p>5 the concept in theory -- who's going to -- who's going</p> <p>6 to explain the environmental water account here? The</p> <p>7 concept and theory is that there's both water and money</p> <p>8 in the environmental water account.</p> <p>9 CHAIRMAN MADIGAN: Let Steve Macauley take a</p> <p>10 minute here. Go ahead, Steve.</p> <p>11 MR. MACAULEY: You know, I'll attempt, Bob, to</p> <p>12 take a crack at this. The environmental water account</p> <p>13 is a notion that above some as yet to be agreed to fixed</p> <p>14 limit for regulatory reallocation of water,</p> <p>15 environmental benefits which would contribute towards --</p> <p>16 environmental water which would contribute towards</p> <p>17 recovery along with ecosystem restoration program and</p> <p>18 other measures would come from an environmental water</p> <p>19 account, where at least right out of the box, the</p> <p>20 manager of the environmental water account would rent</p> <p>21 water, would rent conveyance, would rent storage, and</p> <p>22 presumably, over time, would acquire water, would</p> <p>23 acquire conveyance or rights to it, or would acquire</p> <p>24 storage, rights to it, and with a stable continuous</p> <p>25 source of funding for the program. That's the general</p> <p style="text-align: right;">Page 141</p>

<p>1 idea.</p> <p>2 And, of course, the debate has been for some</p> <p>3 time, what are the level of assurances that can -- that</p> <p>4 can be provided in return for creation of an</p> <p>5 environmental water account, number one, and number two,</p> <p>6 what's the size of the environmental water account. But</p> <p>7 the concept has been out there for several years, and I</p> <p>8 don't think anyone has voiced, you know, vehement</p> <p>9 opposition to the concept that I've heard so far.</p> <p>10 CHAIRMAN MADIGAN: Steve, and then Hap.</p> <p>11 MR. HALL: I guess the cynic in me would be</p> <p>12 happy with the phrase are in a no-jeopardy condition.</p> <p>13 But there's not much cynic in me. So I recommend --</p> <p>14 there was a brief pause for laughter. I don't expect</p> <p>15 applause.</p> <p>16 There aren't fish in jeopardy today. I mean,</p> <p>17 no-jeopardy is a legal term of art. I mean, it's in the</p> <p>18 Endangered Species Act. There's a legal definition of</p> <p>19 it. They issued biological opinions and say whether the</p> <p>20 fish are or are not in jeopardy. And so I would</p> <p>21 recommend that you strike that phrase and simply insert</p> <p>22 to allow recovery to CALFED program goals. They are yet</p> <p>23 to be determined, and I'm not entirely comfortable with</p> <p>24 that. But for lack of a better phrase, meeting program</p> <p>25 goals.</p> <p style="text-align: right;">Page 142</p>	<p>1 think Cliff Schulz referenced this in his comments</p> <p>2 before lunch, of sharing new water supplies as</p> <p>3 referenced above. And the reason I say as referenced</p> <p>4 above is because we have advocated inserting it -- that</p> <p>5 concept earlier in the document. Whether you say it's</p> <p>6 referenced above or not, I guess, is not that important.</p> <p>7 But the concept that as you bring on new supplies, those</p> <p>8 supplies will be shared. The water -- the environmental</p> <p>9 water account will get a portion of it and -- and a</p> <p>10 portion of it will be available to meet water supply and</p> <p>11 water quality.</p> <p>12 CHAIRMAN MADIGAN: Hap.</p> <p>13 MR. DUNNING: In the first sentence of number</p> <p>14 13, reference is made both to the ecosystem restoration</p> <p>15 plan and the EWA. But in the Executive Director's</p> <p>16 report, on page six, mention is made that CALFED intends</p> <p>17 to initiate the program called the environmental water</p> <p>18 program. And they make the point specifically, this is</p> <p>19 not to be confused with the EWA. This is described as</p> <p>20 focused on water acquisitions for tributary flow</p> <p>21 enhancement and Delta outflows. Seems to me, Mike, that</p> <p>22 ought to be mentioned also in that first sentence along</p> <p>23 with the ecosystem restoration plan and the EWA. I</p> <p>24 would think you would want to explicitly reference the</p> <p>25 environmental water program.</p> <p style="text-align: right;">Page 144</p>
<p>1 But I want to be clear here. The Endangered</p> <p>2 Species Act -- and I think the way everybody accepts it</p> <p>3 is that when fish are in a jeopardy condition, nobody</p> <p>4 objects to taking extraordinary measures to bring</p> <p>5 them -- to bringing them out of that jeopardy condition.</p> <p>6 And that has been done. And I don't think there's been</p> <p>7 much debate over that. There's always a debate about</p> <p>8 whether they are or not in such declining populations</p> <p>9 that they deserve to be in jeopardy. But once the</p> <p>10 decision has been made that they're in jeopardy, people</p> <p>11 generally accept that you're going to take extraordinary</p> <p>12 measures to protect them and bring them out of that</p> <p>13 condition.</p> <p>14 Where we are now though is not in having fish</p> <p>15 in jeopardy. We're developing a recovery plan to bring</p> <p>16 them to levels well above, frankly, what's -- what is a</p> <p>17 jeopardy condition. And in that regard, there is a</p> <p>18 concept that we have always understood to be a part of</p> <p>19 CALFED, which is that there would be consistent progress</p> <p>20 on all fronts, not just fisheries improvement, but water</p> <p>21 quality and water supply. So, therefore, I would, along</p> <p>22 with that recommendation, a recommendation -- make a</p> <p>23 recommendation that you add a sentence to say creation</p> <p>24 of the environmental water account will be consistent</p> <p>25 with the policy of sharing new water supplies, and I</p> <p style="text-align: right;">Page 143</p>	<p>1 CHAIRMAN MADIGAN: Steve.</p> <p>2 EXECUTIVE DIRECTOR RITCHIE: Yeah. Just that</p> <p>3 the environmental water program, as identified there,</p> <p>4 distinctively environmental water account, is part of</p> <p>5 the ecosystem restoration plan.</p> <p>6 MS. BORGONOVO: How is the distinction made --</p> <p>7 EXECUTIVE DIRECTOR RITCHIE: The environmental</p> <p>8 water purchase, part of the ecosystem restoration plan,</p> <p>9 is purchasing water for flows on tributaries that would</p> <p>10 at some times also be used for enhanced Delta outflow.</p> <p>11 MR. DUNNING: It's not what your text says. It</p> <p>12 says you coordinate this program with implementation of</p> <p>13 the ecosystem restoration program.</p> <p>14 EXECUTIVE DIRECTOR RITCHIE: Well, yes. And</p> <p>15 would be --</p> <p>16 MR. DUNNING: You don't say it's part of it.</p> <p>17 You say you coordinate it with it.</p> <p>18 EXECUTIVE DIRECTOR RITCHIE: You'd coordinate</p> <p>19 it with it. Yeah, I --</p> <p>20 MR. DUNNING: Making it seem like a separate</p> <p>21 thing.</p> <p>22 EXECUTIVE DIRECTOR RITCHIE: Because the</p> <p>23 environmental water account is basically set up as how</p> <p>24 to manage water relative to operation of the export</p> <p>25 pumps.</p> <p style="text-align: right;">Page 145</p>

<p>1 MR. DUNNING: Right. But you say here that the 2 environmental water program is to be coordinated with 3 implementation of the ecosystem restoration program. Am 4 I reading this wrong on page six of your report? 5 EXECUTIVE DIRECTOR RITCHIE: Yeah, that's 6 probably not worded as artfully as it should be. We 7 don't have legal review of my report to the commission, 8 but the environmental water purchase is part of the 9 ecosystem restoration plan. 10 CHAIRMAN MADIGAN: All right. So clarification 11 is in order here. Okay. All right. Steve Zapoticzny, 12 and then Roberta. 13 MR. ZAPOTICZNY: I kind of like Steve Hall's 14 recommendation as far as with the environmental water 15 account, everyone sharing. I think that additional 16 language would be good. The key is, and our position 17 has been is, what Sunne was alluding to before is the 18 assurances that -- basically, a deal is a deal. When 19 you make a deal, we don't want to see other regulatory 20 actions taking water from others. So I think I -- we 21 still would like that language, but also like what Steve 22 just proposed as well. 23 CHAIRMAN MADIGAN: Can I ask that we -- that 24 you-all consider Steve's language here for a second? Do 25 you want to restate it, Steve?</p> <p style="text-align: right;">Page 146</p>	<p>1 water supply reliability assurance and the like. But it 2 hasn't kind of been discussed in that context, and 3 something that we've -- not necessarily those entities 4 have promoted, but it seems like a pretty good thing 5 to -- to happen. And we should -- and we should kind of 6 bring it up in this context. 7 CHAIRMAN MADIGAN: I presume it is a good thing 8 to happen. I'm not knowing much in the way of detail 9 about it, but the basic notion of it seems so. 10 MR. GRAFF: I mean, I think there may be some 11 interests here that don't think that, but -- 12 CHAIRMAN MADIGAN: I understand. Byron. No, 13 I'm sorry. Roberta first. Excuse me. 14 MS. BORGONOVO: I wanted to pick up on both 15 Cliff's comment and Steve's comment, and that's having 16 the -- sharing the new water with the environmental 17 water account equally between users and the environment 18 is, in my mind, a huge unresolved issue because of the 19 question of public funding. And so when the 20 environmental water account has been explained to us, if 21 public money came in and bought money for the 22 environmental water account, that's water for the 23 environment. It's not 200,000 acre feet for users and 24 200,000 acre feet for ecosystem needs. 25 CHAIRMAN MADIGAN: Byron.</p> <p style="text-align: right;">Page 148</p>
<p>1 MR. HALL: Sure. Again, I would strike the 2 no-jeopardy condition and say meet CALFED program goals. 3 And then at the end of that statement, simply say 4 create -- creation of the environmental water account 5 will be consistent with the policy of sharing new water 6 supplies. 7 CHAIRMAN MADIGAN: Tom. 8 MR. GRAFF: Actually, this gives me an 9 opportunity to bring another issue in which -- this 10 sharing new water supplies has been a bit of a code 11 between some of the water user interests and 12 environmentalists fighting over the environmental water 13 account over the last couple years and over use of 14 public monies to, from our point of view, subsidize 15 water users from the other point of view to make -- get 16 back water that has been given up to regulatory 17 constraints. 18 And I don't know if there's a way to finesse it 19 in the language, but one thing we haven't talked about 20 all day today, and to me was the most amazing 21 development in the water scene in California in the last 22 couple of weeks, was the announcement that Azuricks 23 (phonetic) and Boswell have agreed to sell 100,000 acre 24 feet of water to MWD. And I don't know whether, you 25 know, that's a supplemental water supply and provides</p> <p style="text-align: right;">Page 147</p>	<p>1 MR. BUCK: Let me actually do a little 2 mea culpa. The no-jeopardy was originally language I 3 suggested, and I shouldn't have said it in that way. I 4 think, as it's been pointed out, where we're talking 5 about -- we have stabilized the fisheries. We don't 6 have a jeopardy condition. We are talking about what 7 are the tools we need to start getting recovery and 8 bring it up. And so to that extent, I would substitute, 9 are in a no-jeopardy condition, so that Delta fisheries 10 can be improved or moved towards recovery as the 11 substitute for that. 12 And, again, what the water community is looking 13 for is an assurance that that's done on a budget, that 14 we're not continually tapped and say, oh, what -- guess 15 what, we need another 200,000 acre feet for recovery 16 purposes. Jeopardy is another thing entirely. If you 17 come with that, you got a scientific justification of 18 jeopardy, that's a different situation entirely. What 19 we're talking about is a budget for the recovery. 20 CHAIRMAN MADIGAN: Okay. Thank you for that. 21 Okay. I -- go ahead, Sunne. 22 VICE CHAIR McPEAK: I should not muddy the 23 waters, but -- 24 CHAIRMAN MADIGAN: Why not. 25 VICE CHAIR McPEAK: -- why not. On this, I</p> <p style="text-align: right;">Page 149</p>

1 think that's right. I'm glad -- I appreciate Byron
2 helping clarify it. Because, again, I have been
3 learning through all those 70 pages, and I remember
4 generally who made those comments. But having said
5 that, there -- there is an issue that's been discussed
6 here about the sharing the water. And I didn't -- I'm
7 only beginning to pick up on that, on that code word.
8 Cliff used it before, before lunch. And the -- the
9 territory I'm about to -- I think really should be put
10 on the table or maybe revisited in the interest of
11 trying to find the right mix of solutions is that if
12 it's 400,000 acre feet, as an example, that's paid for
13 by the public for the public benefit, i.e. the
14 environment, yeah, that's for the environment. If
15 there's another portion that is paid for by the
16 beneficiaries, that's for the beneficiaries. I mean,
17 I -- on the storage issue, I actually think that's
18 pretty clear. But I don't understand this dialogue
19 that's now emerging, if the first 400,000 -- if the
20 first facility only can yield "X" amount, and there is a
21 willingness by users to put up their fair share for it,
22 yeah, maybe that's -- maybe that's shared.
23 This question about what is owed back to users
24 is a pretty thorny one. It is embedded in this issue of
25 no more regulatory taking. It does need to get sorted

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1 out. I can tell, by the way, all of you are looking at
2 me, I'm not solving a problem here. I'm only making it
3 worse. But I want to flag that. There is a debate over
4 how much water should be dedicated to the environment
5 today vis-a-vis all the laws. And that debate has to
6 get sorted out. Once that's done, there shouldn't be
7 anymore regulatory taking. I mean, that's sort of what
8 we're trying to say here. And storage going forward has
9 to get paid for.
10 CHAIRMAN MADIGAN: All right. I have Mike,
11 Roberta, Richard.
12 MR. SHAVER: First I want to say I'm in support
13 of what Roberta was saying of water that was designated
14 in the environmental water account should be utilized
15 for that purpose.
16 VICE CHAIR McPEAK: Yeah.
17 MR. SHAVER: But also, what Steve is referring
18 to is creation of water supplies. I don't believe that
19 has to be under number 13. I think if that's kept
20 separately and then evaluated at the time, as Sunne was
21 referring to, depending on who is paying and what's the
22 intended use. So we're looking at implementation, but
23 we just don't look at implementation of the
24 environmental water account, but also water supply
25 reliability for other sources. So I think both points

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1 can move forward, but maybe just not under the same
2 number.
3 CHAIRMAN MADIGAN: Is this under the Eric
4 category? He wasn't here.
5 VICE CHAIR McPEAK: What is the Eric category?
6 CHAIRMAN MADIGAN: Oh, sorry.
7 MR. HASSELTINE: The fact there was an absence
8 of water supply definition in this whole program.
9 VICE CHAIR McPEAK: Oh, I was here. I was
10 here. I was here for that, yes.
11 MR. HALL: The only concept that I want to make
12 clear somewhere on the paper is that the U.S. Fish &
13 Wildlife Service's current position is that in order to
14 give us any sort of regulatory certainty in stage one,
15 any new water developed has to go to their environmental
16 water account. So the things that you ticked off, Mike,
17 enlarge Shasta sites, anything else that's developed,
18 the first 400,000 acre feet has to go to the
19 environmental water account according to the Fish &
20 Wildlife Service. We categorically reject that notion.
21 And so somewhere, maybe you don't see it here,
22 but it seems appropriate to us, if you're going to talk
23 about the environmental water account, that's the
24 appropriate place to put it.
25 CHAIRMAN MADIGAN: It is. I am also, however,

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1 inclined to agree with Eric in terms of we had done the
2 right job of establishing the category of water supply
3 reliability. And that is a piece of that. And I got --
4 we got to think about that. But one of these two
5 places. Okay. All right. I got it. I got it. Let's
6 see.
7 Yes, Sunne.
8 VICE CHAIR McPEAK: Mike Stearns had to leave,
9 and has actually a comment for us.
10 CHAIRMAN MADIGAN: I'll get to --
11 VICE CHAIR McPEAK: And I'm happy to -- I want
12 to share Mike's comment, because it does go to the
13 essence of this, which is that the -- he says, this is
14 Mike Stearns, CVP ag and urban users have been whacked,
15 and some users cannot survive seven to ten years to
16 realize improvement in supply. He recommends set a goal
17 of restoring 400,000 acre feet to the CVP, which is
18 taken by the CVPIA and ESA by the end of stage one.
19 That incentive needs to be there. That's Mike Stearns'
20 comment.
21 CHAIRMAN MADIGAN: Okay.
22 VICE CHAIR McPEAK: It's all part of this thing
23 that we're --
24 CHAIRMAN MADIGAN: Right. Roberta.
25 MS. BORGONOVO: Perhaps Steve Ritchie can

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1 clarify this. I had not understood that the
2 environmental water account was to come from new supply,
3 meaning new storage. I can see it coming from new
4 water. But we've talked a number of ways in the way in
5 which you might put water into the environmental water
6 account. So linking it to new storage is a problem.
7 But I just wanted to go back to the concept that I think
8 Hap and Bob were both making, and that is that in many
9 of the consensus groups that we have all worked in, we
10 have agreed that CALFED is not taking the place of the
11 regulatory agencies. Therefore, you can't say that
12 there won't be regulatory restrictions and regulatory
13 water coming in that's new to the system. What you can
14 do is you've put a ton of money into this program,
15 millions and millions of dollars. What we're trying to
16 do is to do what Hap said, or the way that Mike said it,
17 and that is to minimize the regulatory water coming into
18 the system. So I hope that that is understood when we
19 went back and did the rewording. Is that understood?
20 Because that's what I heard Hap saying. And I thought
21 there was some -- there may not be agreement on that
22 then. Maybe one of those items we pull out, and we say
23 we don't have consensus.
24 CHAIRMAN MADIGAN: Let me think here for a
25 second. I would like to find a way to do about three

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1 things here. One of them is to recognize Eric's water
2 supply reliability issue. One of them is to recognize
3 the notion, and I am sensitive to this, Tom, so I'm
4 willing to use any phrase that isn't a code word for
5 something that -- so I'm not trying to -- I don't want
6 to pick something that's a code word. But the notion
7 that we get well together in this enterprise. And
8 because I thought that Hap made a good point that, in
9 fact, what we are doing is not replacing regulatory
10 agencies, that in fact, what we are really -- and I
11 think the reason I used obviate the necessity was
12 because I think, to me, that implies the notion of what
13 it is that we're trying to do here. We're trying to set
14 up a system where regulatory agencies simply don't come
15 into play.

16 I mean, when these multiple species
17 conservation plans, these multiple habitat plans that
18 are being developed get approved, the basic notion of
19 those things is that, in fact, you have satisfied the
20 need for a sufficient habitat for a species that that
21 species no longer -- that however -- whether there's six
22 or 18 or 93, or whatever it is, that those species no
23 longer are going to show up on the endangered species
24 list. It doesn't mean that they can't. It means that
25 somebody has scientifically looked at the question and

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1 said this habitat should be sufficient to ensure that
2 that species can do better than -- than being in
3 jeopardy, that they can recover in some fashion. And I
4 guess those were the words that I was looking for. And
5 I would like to figure out how to do those three things,
6 and nothing leaps instantly to mind here as being a way
7 to do it. But I promise you we'll think about it and
8 see if we can't figure it out.

9 MR. DUNNING: Your phrase is fine. Obviate the
10 necessity instead of ensure would solve my problem.

11 EXECUTIVE DIRECTOR RITCHIE: Actually, I would
12 agree. I think that was probably the best I've heard it
13 stated. Way to go.

14 CHAIRMAN MADIGAN: Yeah. Way to go.

15 EXECUTIVE DIRECTOR RITCHIE: It's to have the
16 ability to do it. But, in fact, the assurance is that
17 they feel so confident in the tool that they will say
18 they will not invoke it, because they won't have to.

19 CHAIRMAN MADIGAN: Right. Tom.

20 MR. GRAFF: I'm just going to make a conceptual
21 response. I think your idea is sort of in the right
22 direction, and it's something that makes sense sort of
23 overall. But there is a difference between the water
24 world and the land habitat conservation planning world
25 that you referred to. The big difference, in my mind,

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1 is that the state, and particularly the federal
2 government, for, what, decades, nearly a century, I
3 mean, since the Reclamation Act of 1902, has invested
4 public money and has sold public resources at far below
5 even cost, much less value. And so it is appropriate
6 for the public, through their governments, to reassess
7 from time to time the appropriate use of the public
8 resources and the public money.

9 And, effectively, that's what congress did in
10 1992 with CVPIA. And, unfortunately, from my point of
11 view, California has never really done that as a state.
12 And maybe that's what -- partly what CALFED is about.
13 But nobody ever has gone back to look at, you know, we
14 gave away, basically, to huge numbers of local users,
15 and we almost never talk about, and through the State
16 Water Project, large amounts of the state's water, and
17 to some extent, money. So it is appropriate from time
18 to time to say is this the right mix.

19 CHAIRMAN MADIGAN: Okay.

20 VICE CHAIR McPEAK: I think -- just a
21 clarification. Roberta asked a question about how would
22 the water in the environmental water account get there,
23 and I wanted to clarify. I did not mean to suggest it
24 would be only through new storage. I think it's through
25 a variety of sources still being defined. Is that true?

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<p>1 EXECUTIVE DIRECTOR RITCHIE: Yeah. I think 2 Steve may have mentioned this earlier, but I think 3 because of the -- probably the lack of flexibility in 4 the system, I think the expectation is that early on it 5 would have to be purchases. And I think everybody 6 agrees those are tools that are expensive tools to buy 7 water, essentially, on the spot market on an ongoing 8 basis. And that being able to store water in 9 groundwater, or potentially in either existing or 10 additional reservoirs is appropriate. I, personally, 11 and I've said this publicly a number of times, I think 12 one of the early environmental water account 13 acquisitions would be to try to negotiate with 14 Metropolitan Water District for space in Diamond Valley 15 Lake where they could put water. I think that's 16 probably where -- in fact, that was one way to look at 17 Diamond Valley Lake is exactly that's what it was built 18 for, to be that insurance policy when things were not 19 working out in the Delta for export purposes. 20 CHAIRMAN MADIGAN: I guarantee you that is why 21 it was built, having been the chairman -- 22 EXECUTIVE DIRECTOR RITCHIE: Yeah. So you 23 could even say, in effect, it was a version of the 24 environmental water account that came early on. 25 CHAIRMAN MADIGAN: Guaranteed.</p> <p style="text-align: right;">Page 158</p>	<p>1 that we schedule another meeting between now and the 1st 2 of June, and to give it another effort at seeing how 3 much we could close the gaps and how much we could do in 4 terms of -- of representing a BDAC view on these things. 5 And let me ask for your comments on that, 6 because it bears somewhat on how we conduct the rest of 7 the afternoon. 8 Sunne. 9 VICE CHAIR McPEAK: Byron. 10 CHAIRMAN MADIGAN: Oh, Byron. Excuse me. 11 MR. BUCK: Yeah. I'd certainly support that. 12 I don't know that we have any other alternative. I 13 think we have made really good progress. And I would 14 agree with you we probably had more of a meeting of the 15 minds than I would have expected. 16 CHAIRMAN MADIGAN: Other thoughts? Hap. 17 MR. DUNNING: It seems to me from just talking 18 here, and I think -- I can't speak for others, but my 19 initial reaction is that sounds like a productive way to 20 do it, Mike. 21 CHAIRMAN MADIGAN: Okay. No, we will 22 absolutely go through and get the remainder of the 23 comments today, Torri. And we are going to spend some 24 time on the -- on the preamble as well. So I -- my 25 statement isn't that we're going to wrap things right</p> <p style="text-align: right;">Page 160</p>
<p>1 EXECUTIVE DIRECTOR RITCHIE: So those kinds of 2 tools, I think, are the things that need to come in play 3 for the environmental water account to be useful. 4 CHAIRMAN MADIGAN: I'm going to suggest 5 something here that wasn't a part of my original 6 expectations for today, and just try it out on you here. 7 We have, frankly, agreed on more things than I thought 8 we were going to agree on around here. And I realize we 9 haven't agreed on everything, and that there are some 10 basic beliefs that are still out there. And I'm not -- 11 and I'm not making light of that. My original notion 12 out of today was that Sunne and I and Steve and Eugenia 13 would take this stuff and that we would work it down 14 into what we thought was as -- those things that we 15 thought we had agreed, clearly identify those places 16 where we didn't agree, Sunne and I would go forward with 17 our recommendation to the policy group next week, say 18 there it is. 19 We made more progress than that around here. 20 I'm going to suggest, for your consideration only, that 21 Sunne and I, in fact, deliver a progress report on this 22 next week to the CALFED policy group that we convene 23 another meeting of this group for you to review the 24 document that we all come up with over the next couple 25 of weeks. Because we won't get this done overnight,</p> <p style="text-align: right;">Page 159</p>	<p>1 now. It is simply that I wanted a sense whether or not 2 the remainder of the group felt as I did about the 3 course of this today. All right. Fine. 4 Sunne. 5 VICE CHAIR McPEAK: I want -- I'm trying to 6 decide if I can -- I'm going to make matters probably 7 worse, but I think it's important to underscore. This 8 issue that's here that we're talking around seems to me 9 to be, again, one of the -- another remaining defining 10 issue. And it's at the heart of what might be the most 11 sticky issues between the state and federal negotiations 12 as I understand them. And so maybe our blood sugar is 13 low after lunch, although that shouldn't be the case. I 14 don't know if our energy has ebbed, or whatever. 15 However, let me just try to, again, at least put on the 16 table what I think we've got to revisit. 17 Acknowledging -- I personally acknowledge that 18 what Tom Graff said is both correct and appropriate, and 19 that is that the public and our representatives have the 20 obligation to revisit periodically the most appropriate 21 prudent uses of resources for the public good. And that 22 that, in fact, was done by our representatives in 23 various laws, including CVPIA. I want to also 24 respectively suggest that that was probably the last 25 time it was going to happen in my lifetime without some</p> <p style="text-align: right;">Page 161</p>

<p>1 other solution going on here.</p> <p>2 And so in this number 13, whether the word is</p> <p>3 ensure or minimize the need for, the artfully crafted</p> <p>4 language that you used, I think the heart of the matter</p> <p>5 is if the amount of water that will be defined in the</p> <p>6 near term, say, stage one, that's dedicated from users,</p> <p>7 urban and ag, to the environment is not clearly</p> <p>8 identified and limited -- or by that I mean defined, so</p> <p>9 that -- so that it's quantified, when I say limited,</p> <p>10 quantified, and there's an open end to how much more</p> <p>11 water may be taken from the users, there's not going to</p> <p>12 be a deal.</p> <p>13 That's what that's about. Unless you are in a</p> <p>14 no-jeopardy -- if you're in a jeopardy position -- I'm</p> <p>15 trying to learn this language. But if -- if we've got</p> <p>16 species jeopardized, whole other laws kick in. But --</p> <p>17 but the dialogue that we have been having is about</p> <p>18 assuming there is continuous improvement in the</p> <p>19 fisheries, that there is not a jeopardy position, then</p> <p>20 the amount of water that it will get defined and</p> <p>21 dedicated to the environmental water account is what's</p> <p>22 going to be available.</p> <p>23 That does not mean that the environmental water</p> <p>24 account with money can't go out and, I guess you used,</p> <p>25 Steve, the word rent, acquire, whatever, get water for</p> <p style="text-align: right;">Page 162</p>	<p>1 circumstances. So I think, you know, what the baseline</p> <p>2 is for both sides needs to be addressed.</p> <p>3 VICE CHAIR McPEAK: I totally agree. They're</p> <p>4 both pipe dreams. I was going to use another word, but</p> <p>5 I probably shouldn't. That's right.</p> <p>6 CHAIRMAN MADIGAN: Howard.</p> <p>7 MR. FRICK: If I understand your suggestion,</p> <p>8 you would not take a motion to the policy group</p> <p>9 Wednesday, correct?</p> <p>10 CHAIRMAN MADIGAN: Correct. Correct. We would</p> <p>11 take a progress report. I mean, I think we would talk</p> <p>12 about those areas where we seem to have some sense of</p> <p>13 agreement, but not represent it as either a BDAC</p> <p>14 position and not take something and say this is what</p> <p>15 Sunne and Mike think you ought to do. But simply say</p> <p>16 that we have spent a pretty productive day going through</p> <p>17 this stuff here, seems to be some areas that -- where</p> <p>18 we've got some agreement here, but there are a lot of</p> <p>19 comments about these kinds of things. We're drafting</p> <p>20 this document now, and maybe we have a draft by then to</p> <p>21 show them of the document that's going to come back to</p> <p>22 this group for further work and review. But it's that</p> <p>23 kind of thing. Okay?</p> <p>24 Fifteen. I'm sorry. Excuse me. Steve.</p> <p>25 MR. HALL: Well, I just want to be clear. And</p> <p style="text-align: right;">Page 164</p>
<p>1 the environment. They can be very creative. That's the</p> <p>2 reason for establishing an environmental water account.</p> <p>3 Let's introduce market forces into addressing the needs</p> <p>4 of the environment. But don't -- don't -- you know,</p> <p>5 don't misunderstand how difficult this one issue is and</p> <p>6 how important it is, as I'm understanding the dialogue,</p> <p>7 so --</p> <p>8 CHAIRMAN MADIGAN: Right. Tom, and then</p> <p>9 Howard.</p> <p>10 MR. GRAFF: I agree with most of what Sunne</p> <p>11 said. But I think a flip side that needs to be</p> <p>12 addressed then is what is the baseline commitment in the</p> <p>13 state and federal projects to the water users.</p> <p>14 CHAIRMAN MADIGAN: Well, that's certainly one</p> <p>15 of the serious points.</p> <p>16 MR. GRAFF: We are still stuck on four million</p> <p>17 acre feet a year in the State Water Project. We had our</p> <p>18 opportunity at the time of the Monterey Agreement to</p> <p>19 revise that. It wasn't done. Environmentalists weren't</p> <p>20 at the table. As far as the feds are concerned, you</p> <p>21 have an apparent expectation on the part of the west</p> <p>22 side that they're going to somehow go back to a</p> <p>23 contractual amount that they never should have -- and it</p> <p>24 should never have been agreed to by the Reagan</p> <p>25 administration, and is unrealistic under current</p> <p style="text-align: right;">Page 163</p>	<p>1 I'm not sure exactly where we left that language. But</p> <p>2 it -- I agree with your concept that the intent here is</p> <p>3 to obviate the need for additional regulatory takings,</p> <p>4 so I didn't say anything. But if -- if where we wound</p> <p>5 up was, well, we're going to try really hard not to take</p> <p>6 anymore water regulatorily, but if we have to, we have</p> <p>7 to, that's -- we can't accept that.</p> <p>8 CHAIRMAN MADIGAN: I think the notion is to --</p> <p>9 you know, I while I recognize there are differences</p> <p>10 between, you know, terrestrial issues and water issues,</p> <p>11 these MHPAs are not all that far off of where it seems</p> <p>12 to me that we are trying to go. And I will -- having</p> <p>13 been a part for a five-year negotiation to develop one</p> <p>14 in San Diego will tell you that it was extremely</p> <p>15 difficult for the regulatory agencies to come to grips</p> <p>16 with the notion that this plan really meant that they</p> <p>17 needed to develop an attitude of recognizing that they</p> <p>18 were getting their slice of the apple here and that this</p> <p>19 was where the science was to be applied. And, boy, we</p> <p>20 spent a lot of time on that stuff. And almost</p> <p>21 immediately, the first thing that happened was, I mean,</p> <p>22 within 48 hours of the approval of the MHPA in South San</p> <p>23 Diego County, there was a proposal by the Fish &</p> <p>24 Wildlife Agency to list other species. Because they</p> <p>25 just -- it was so hard for it to work it out of their</p> <p style="text-align: right;">Page 165</p>

<p>1 system. But since then, actually, the thing has begun 2 to function pretty responsibly, and the regulatory 3 agencies have behaved better, which is, you know, -- 4 MR. GRAFF: I wonder what they think about the 5 developing. 6 CHAIRMAN MADIGAN: -- saying a lot. And I 7 guess that's where I'm trying to get. And I don't know 8 how we say it, but we're going to work on it over the 9 next few days. And we're going to bring it back. 10 Yeah, Richard. 11 MR. IZMIRIAN: I want to remind you that you 12 forgot me. 13 CHAIRMAN MADIGAN: Richard. 14 MR. IZMIRIAN: And also to remind Steve that 15 this morning he said there would be no guarantees of 16 water for agriculture and urban users. 17 MR. HALL: There are guarantees, they just 18 aren't worth anything. 19 MR. IZMIRIAN: And I would like to associate 20 myself with Roberta's comments about CALFED can't say 21 that there will be no further regulatory actions about 22 water. And I agree with Tom that -- well, maybe this 23 isn't agreeing with Tom. But the fish shouldn't have to 24 pay for their water through public funding. This is 25 clearly mitigation for water development and not solely</p> <p style="text-align: right;">Page 166</p>	<p>1 Would certainly support that being integrated and to 2 give the state and the feds, federal agencies, some 3 credit. I mean, after the December episode, they have 4 revise the operating decision making process to make 5 sure we're looking at all of these issues. What 6 happened in December is we had basically fishery 7 objectives and closure for the Delta cross-channel, 8 driving the system. I mean, we drove it right to the 9 point of violating water quality standards under the 10 Clean Water Act and under Porter Cologne without any 11 real consideration for those. In fact, the mitigation 12 measures that were in the Central Valley Project 13 Improvement, Act PIS on water quality, were completely 14 bypassed. They were just ignored. So that brought to 15 the attention that we need to be looking at these three 16 coequal objectives in operating decisions. That has 17 been, to some degree, certainly integrated in the 18 process. I would certainly support that a science 19 element needs to be in there. Those -- it's there to 20 some degree now, but not in terms of a peer review 21 process. 22 Having said that, a lot of this stuff is done 23 on a very real-time basis. There isn't a lot of chance 24 for, you know, a huge independent peer review process in 25 some cases. But to have that going along with the</p> <p style="text-align: right;">Page 168</p>
<p>1 for the benefit of fish. 2 CHAIRMAN MADIGAN: So noted. 3 MR. HALL: Let the record show I restrained 4 myself. 5 CHAIRMAN MADIGAN: Right. The record should 6 show that Steve did a pretty darned good job of it, too. 7 Okay. Fifteen. Brenda. 8 MS. JAHNS-SOUTHWICK: Thank you. I think this 9 one -- this particular item is a good point to, again, 10 go to the accountability issues in terms of the details 11 on how this sort of thing is accomplished. And it -- 12 one thing we need to look at is how you incorporate 13 science and peer review, and is there a role for a 14 scientific review panel in this process. And I think 15 another concept that I don't see written there that 16 needs to be evaluated is the whole concept of a 17 unilateral decision being made by, say, Fish & Wildlife 18 Service or someone else, and how that can be resolved in 19 a way that relates to the immediate concerns and 20 achieves balance. 21 So, somehow, I would like to see something 22 about peer review, scientific review, participation, or 23 something like that incorporated into this statement. 24 CHAIRMAN MADIGAN: Byron. 25 MR. BUCK: I'm kind of the author of this.</p> <p style="text-align: right;">Page 167</p>	<p>1 operations decision process incorporated all along, 2 certainly in a review of decisions and what happened and 3 why, I think would be something that would really help 4 the process. 5 CHAIRMAN MADIGAN: Eric. 6 MR. HASSELTINE: Byron, elevating decisions, 7 what does that mean? Does that mean -- 8 MR. BUCK: Well, if you go back to December, we 9 essentially had decisions on closing the Delta 10 cross-channel, made it very low levels within the Fish & 11 Wildlife Service, and it did not get up even to the 12 level of the regional administrator, did not get 13 anywhere close to cabinet level, and yet we had a near 14 train wreck. And so what that says is that we can't 15 make the decisions when they threaten other objectives. 16 We've got to make them at a higher level. 17 CHAIRMAN MADIGAN: Okay. All right. We are 18 going to move on to the preamble. And I would like to 19 listen to comments. And maybe, Alex, because this 20 really had its genesis in your efforts, you might 21 introduce to us the reasons for it. 22 Eric, you had some comments in terms of things 23 that were in the preamble that maybe ought to be bullet 24 points instead. 25 Torri, you have an organized presentation, and</p> <p style="text-align: right;">Page 169</p>

<p>1 I would like to do those three things and then get 2 comments from the group so that we can keep going on 3 this effort.</p> <p>4 MR. HILDEBRAND: Well, the thing that suggested 5 the idea to me was we have not made yet the analyses 6 that are necessary to substantiate the preferred 7 alternative. We're far from it. And yet we are 8 proposing to go ahead with a ROD. Well, if time were of 9 no problem, the thing would be to up the ROD until we 10 had done those things. They should have been done 11 before by got this far, but they haven't been done.</p> <p>12 So the question is how do we proceed with those 13 things that are well-defined and clearly justified, and 14 at the same time, establish the ground rules and the 15 boundary conditions under which we will make the 16 analyses that haven't yet been made, make the 17 improvements, alterations of the program that are 18 clearly needed, and have an open process to decide 19 whether they stem correctly before we proceed to 20 implement them.</p> <p>21 There are a number of areas, the principle 22 areas that deal with the water supply, and the 23 conveyance, and some aspects of water quality. So that 24 was a basic thrust of what made me think up this idea of 25 getting around this time problem. I think it's</p> <p style="text-align: right;">Page 170</p>	<p>1 canal. So in order to do that with any acceptance in 2 the Delta, it has to be done only because it is proven 3 to be necessary to make the through-Delta work, and it 4 may be. And, secondly, that it must be indicated that 5 if we do put it in, we then don't have to have the 6 canal. So it must be both adequate and sufficient.</p> <p>7 And we can go on as we go through the preamble 8 with some of the other things. Another big thing is the 9 storage question. It seemed to me that we have to have 10 a process for settling that. I don't understand 11 Cliff Schulz's comment about it. The CALFED has 12 undertaken the question of water supply adequacy in the 13 central Delta. We're not talking about the rest of the 14 state. But the water supply needed within the central 15 Delta and exported from it is being pretty well-defined 16 by the things we're doing. We, therefore, need to find 17 out whether there's a cap on supply and demand and 18 quantify that. And the preamble suggests a procedure 19 for determining whether there is a gap, which most of us 20 believe there will be, but then quantifying the amount 21 of that gap, and then deciding what do we do about it in 22 an open process.</p> <p>23 So that was the general concept of the thing, 24 and I would like to comment a little further on some 25 specifics as we go along through the analysis.</p> <p style="text-align: right;">Page 172</p>
<p>1 unfortunate we're in that position, but we seem to be. 2 Now, then, you turn to -- let's talk about 3 conveyance. In the case of conveyance, the preferred 4 alternative, as I said earlier, from my point of view, 5 is a disaster for everybody. It's a disaster for the 6 Delta. It's a disaster for all concerns. And it has 7 every appearance of being designed to fail whether that 8 was the intent or not. So we have a lot of work to do 9 there.</p> <p>10 I certainly agree with the problems Byron and 11 others have mentioned that occurred because of the thing 12 being so stupid, this shutting off the cross-channel 13 without making any other provision. But there are a lot 14 of things we can do, and we won't know -- and most of 15 them don't cost very much, and it can be done fairly 16 promptly to find out just to what extent we can improve 17 the through-Delta without even putting in this Hood 18 connection. And I agree with Steve that if we do have 19 to have such a connection, and we may have to have, 20 there's got to be something to achieve a purpose rather 21 than some preconceived design.</p> <p>22 From a, you might say, a political point of 23 view, there's enormous proposition in the Delta to 24 putting in such a thing as that Hood connection when 25 it's perceived to be merely the first leg of an isolated</p> <p style="text-align: right;">Page 171</p>	<p>1 CHAIRMAN MADIGAN: Eric. 2 MR. HASSELTINE: Thank you, Mike. I thought 3 that the idea advanced here by Alex for providing a 4 preamble for the preferred program alternative was an 5 excellent idea, and especially in terms of laying forth 6 the commitments and trying to explain exactly what the 7 program was all about and how it was going to proceed. 8 And I liked everything that was in it, down to the point 9 where we got done with the commitments, and then we 10 started talking about conveyance, water quality, and 11 water supply. And that's where I think a certain amount 12 of confusion came into, because those were issues that 13 were dealt with within the body of the alternative 14 itself.</p> <p>15 So I thought that the preamble is important and 16 it's an excellent statement relative to the commitments 17 for how we're going to try to deal with this entire 18 program. But I think that -- that the preamble should 19 be a preamble to the entire program, and that the 20 specific wording in here dealing with particular 21 components of this, I don't quarrel with the ideas and 22 the thoughts that are here in the -- and the necessity 23 for them, but I think that they ought to be moved to 24 those portions of the document to which they apply. In 25 other words, if there's going to be some commentary on</p> <p style="text-align: right;">Page 173</p>

<p>1 the conveyance, it ought to be in the conveyance 2 section, and perhaps there ought to be an introductory 3 paragraph to the conveyance discussion. That's where it 4 would flow more smoothly, and I think be much easier for 5 people to relate it.</p> <p>6 And then today, we had some -- part of the 7 recommendations we had today dealt with conveyance and 8 accelerating the time frame for some of the conveyance 9 determinations. I mean, all of that ought to be all 10 together in one place, so if somebody wants to really 11 study and see what the conveyance recommendations are in 12 this whole program, they can find it without having to 13 search the preamble, search other places.</p> <p>14 MR. HILDEBRAND: I was certainly hoping it 15 would be in the preamble or any other location.</p> <p>16 MR. HASSELTINE: Yeah.</p> <p>17 MR. HILDEBRAND: That's why I suggested this 18 morning we ought to look at the preamble before we 19 argued about the wording elsewhere so much, and see 20 whether we might move one way or the other.</p> <p>21 MR. HASSELTINE: Yeah. And the same thing 22 holds true for the water quality. I mean, there's just 23 two paragraphs here dealing with water quality. I think 24 that would be better off in the water quality section of 25 the alternative. The water supply, as I commented</p> <p style="text-align: right;">Page 174</p>	<p>1 MR. HALL: Well, I was just -- Eric hit on 2 something that I think is worth considering, and that is 3 we have a number of concerns about language in the 4 preamble, which we'll get to in due course, I guess, 5 although I'm not sure we're going to be able to get all 6 the way through the preamble today. And yet there are a 7 number of concepts in there that I think we would all 8 agree are worth being in our recommendation or being in 9 a recommendation to the policy group. Certainly, I want 10 to hear from the folks about environmental justice. I 11 support many of the statements that are in the preamble 12 with regard to that.</p> <p>13 I think Eric's comment is a very good one. And 14 I think we would have some concerns, just procedurally, 15 with trying to force-feed CALFED something in the 16 preamble of their document. This is a legal document. 17 I think it's going to be very torturous to try to get it 18 inserted into there. So I guess I would argue that what 19 we might want to consider is taking those sections of 20 what Alex has drafted and has since been edited that we 21 could agree on, and then asserting them elsewhere in the 22 document.</p> <p>23 CHAIRMAN MADIGAN: Let me ask legal counsel 24 about this. Counselor, the question here really has to 25 do with a preamble as an appropriate device for</p> <p style="text-align: right;">Page 176</p>
<p>1 earlier, there is no water supply section in the -- in 2 the program alternative, which I think is a problem. 3 And so those comments which, frankly, I also have a lot 4 of questions on, but rather than raise those today, if 5 we can somehow sort of figure out how we're going to 6 deal with water supply in general, I don't think that 7 should be dealt with in the preamble. I think that 8 should be dealt with in a section in the program, in the 9 alternative document itself. And that the preamble, 10 therefore, should basically end right above the 11 through-Delta conveyance at this point.</p> <p>12 There are two paragraphs which follow the 13 through-Delta conveyance, initial paragraph, dealing 14 with sort of the optimization of the program 15 alternative. And I don't see where that really relates 16 to the conveyance at all except for the fact that the 17 very last sentence in the second paragraph there says 18 the optimization may also include a new channel. But I 19 don't know, this is language that sort of belongs 20 somewhere else, I think. And that's -- that would be 21 the first two paragraphs on page seven.</p> <p>22 MR. HILDEBRAND: Could we talk about the 23 language, and then decide where to put it?</p> <p>24 MR. HASSELTINE: Sure.</p> <p>25 CHAIRMAN MADIGAN: Yeah. Steve.</p> <p style="text-align: right;">Page 175</p>	<p>1 including policy recommendations, I guess, by this group 2 as opposed to whether we should be revamping the 3 preamble, and maybe even eliminating the preamble, and 4 incorporating the relevant bullets as additional bullets 5 here.</p> <p>6 MS. SCOONOVER: The record of decision and 7 certification are legal requirements under both the 8 California Environmental Quality Act and the National 9 Environmental Policy Act. The CALFED lead agencies, 10 both state and federal, have the responsibility for 11 drafting these documents. As you can imagine, all of 12 these agencies probably have their own ideas about not 13 only the words and the decisions, but the format. And I 14 think that's going to be a battle for down the road. So 15 I would strongly encourage you to instead of focusing on 16 the specific vehicle to identify the issues that you 17 believe need to be addressed by the decision makers as a 18 part of their making the decision. Now, whether those 19 actually end up being reflected in some kind of 20 introduction to the record of decision, or whether 21 they're incorporated into a phase two report, or an 22 implementation plan, or where they're actually reflected 23 is, I think, beyond any of us at this moment to be able 24 to predict. So that would be my strong recommendation. 25 CHAIRMAN MADIGAN: Sure. As we come up with</p> <p style="text-align: right;">Page 177</p>

1 this, then maybe the best thing that we can do besides
2 giving our advice to the policy makers is send it over
3 to you and ask you to begin to think about how -- how
4 the best way is for this ultimately to be incorporated.
5 And maybe we don't fix on today the format. Maybe we
6 don't worry too much about the format right now.

7 MS. SCOONOVER: Yes. And bear in mind, too,
8 that it's not only the decision makers, but each of the,
9 what is it now, 17 state and federal agencies have their
10 own legal counsel with their own views of how this ought
11 to be drafted.

12 CHAIRMAN MADIGAN: Right.

13 MS. SCOONOVER: So you can begin to see how
14 difficult it would be for even me to say this is my
15 preference and for it to mean much of anything at the
16 other end.

17 CHAIRMAN MADIGAN: Okay.

18 MS. SCOONOVER: But I would be glad to work
19 with you and work with the agencies in terms of trying
20 to find the appropriate location for your comments to be
21 incorporated. But it's impossible to do at this time.

22 CHAIRMAN MADIGAN: That will do. That will do.
23 Okay. Then let's go back to the book. We don't have
24 overheads for this, but it's in the second section of
25 your packet today. And I'm on really page five, I

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1 think, where the general category line has been
2 eliminated. And it says CALFED commits to compliance
3 with the CALFED solution principles, reduce, be
4 equitable, be affordable, durable, and be implementable.
5 That repeats what we have said.

6 Eric.

7 MR. HASSELTINE: Yeah. I would not want to try
8 and inject new language into the solution principles at
9 this time if it wasn't there before. But I always
10 thought that cost and/or affordability had something to
11 do with being implementable. And there's nothing about
12 that there. That's never been there. I wouldn't
13 suggest adding it necessarily at this point, but I
14 certainly think cost is a real factor in whether or not
15 it can be implemented.

16 CHAIRMAN MADIGAN: Well, I guess, yeah. If you
17 go up under be affordable, the solutions be
18 implementable and maintainable within --

19 MR. HASSELTINE: Oh, I'm sorry.

20 CHAIRMAN MADIGAN: Yeah.

21 MR. HASSELTINE: You're right. You're right.

22 CHAIRMAN MADIGAN: Is, I guess, the way I would
23 look at that. Other questions?

24 This is as good a time, I think, Torri, as any,
25 if I could ask you to introduce the subject. And I have

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1 speaker slips here from Kathryn Alcantar,
2 Michael Warburton, and Arlene Wong. And then you may
3 have -- you may have somebody else, too. And if you
4 have others, make sure that they fill out a little blue
5 slip so that we have it for the record. Okay? You're
6 on.

7 MR. ESTRADA: Good. I want to step back a
8 little bit, because I feel, in terms of addressing
9 environmental justice, we're maybe at a different point
10 than a lot of other points that were raised earlier
11 today. And it strikes me that in work I've done on
12 environmental justice, we have to first get over this
13 hurdle of legitimizing the issue. And what we're
14 proposing in our comments is a small step.

15 We realize that there are some short-term
16 objectives that CALFED -- we would like CALFED to do in
17 terms of environmental justice, which we think are small
18 steps, but we realize there's a lot of work in front of
19 us. And we haven't been at the table that long, and
20 there hasn't been environmental justice representation
21 in CALFED for a while. So what we're hoping for is at
22 least some commitments from CALFED to expand its work on
23 environmental justice.

24 Just to be clear, we feel there are obligations
25 by CALFED agencies, both federal and state, to address

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1 environmental justice. And I know this might be
2 somewhat of a point of contention, but I think there is
3 clear precedence on the executive order, clear
4 precedence of the Civil Rights Act of 1964 that
5 environmental justice is an issue for federal agencies.
6 There is also precedent with state legislation that was
7 passed in the last couple of years where state agencies
8 are having to look at their policies and programs,
9 looking at CEQA and how they're going to address
10 environmental justice. They're not laws, per se, right
11 now, but I guess our push for BDAC and CALFED was to
12 kind of get ahead of the game here, and begin to set in
13 motion some commitments so that, as we move down the
14 line, we have some structures in place to address
15 environmental justice.

16 So what I'm going to do is just outline -- I
17 passed around our most recent letter. And I'll go
18 through that. And there's basically five things we're
19 asking for right now. And the first one is basically a
20 very simple, and it's actually in one of the bullet
21 points, is to adopt environmental justice as a principle
22 in the CALFED program. And so what does this mean? And
23 we have taken some time actually to put together some
24 proposed language about what this does mean. And it
25 draws directly from the President's order on

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46 (Pages 178 to 181)

1 environmental justice. And I won't read through that,
2 but it's on page three of the memo that we passed
3 around. And it basically is making an overall -- what
4 we see this as is making an overall commitment,
5 programmatically in CALFED, to environmental justice to
6 a set of principles that are similar to the CALFED
7 solution principles to deal with environmental justice.
8 But moving from that, what we would like to also see is
9 that environmental justice, as an issue, be represented
10 in the objectives and goals of each of the program
11 areas. It has not been integrated thus far into the
12 program areas.

13 You know, one immediate area is water quality
14 in terms of looking at fish contamination. It's a major
15 issue for our constituency. There needs to be goals and
16 objectives under those programs to address those issues.
17 The other thing I would like to get towards is, and we
18 feel strongly about this, is that at this point,
19 CALFED's analysis around environmental justice is really
20 lacking. And we realize that natural resource and water
21 agencies haven't dealt with environmental justice.
22 Actually, very few agencies have dealt with it. But we
23 feel that there is plenty of examples and work in the
24 area of environmental justice around air, water in other
25 states where we can begin to build a stronger analysis

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1 around environmental justice to identify existing
2 problems in the Bay-Delta system that relate to water
3 that need to be addressed, like fish consumption, as
4 well as having a structure in place to identify impacts
5 from proposed actions. And we feel that, in review of
6 not only the draft documents, but the preferred
7 alternative, that we have not really moved that far in
8 this vein.

9 The other thing we're asking for as well as for
10 environmental justice representation on not only CALFED
11 governance, which we'll get to later, but also in
12 program areas where there's some decision making and
13 program development. We feel there's a lack of
14 expertise within CALFED's agencies, but also in program
15 areas to address environmental justice. And so I know
16 we can't get there tomorrow, but I think what we're
17 asking for is a commitment to have staff and resources
18 in the agencies to affirmatively address environmental
19 justice, but also having some of the expertise and
20 representation on these program areas to help put those
21 programs together.

22 And then, obviously, the last thing we're
23 asking for is resources and staff from CALFED to
24 actually move and actually allow these other things to
25 happen, to implement the goals and objectives in each of

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1 the program areas, but also to conduct the analyses.

2 So that's overall what we're asking for. We
3 think that's a pretty small step. We feel that it
4 should be an up-front commitment of CALFED to do that.
5 We're a little alarmed that this got kind of thrown in,
6 even though I realize trying to figure out where this
7 fits in is maybe problematic. But we really feel this
8 is a commitment that needs to be in a draft
9 recommendation.

10 So -- and we realize at this point that our
11 comments are overarching, in general, but I think we
12 would like BDAC and CALFED to recognize that, I mean,
13 our goal here was to try to at least get environmental
14 justice on the table. And we feel this is a first step
15 in doing that. In the short term, we want to have
16 CALFED and BDAC support implementing environmental
17 justice principles and goals, but we actually want to
18 move forward from there and actually getting more
19 specific about what does that mean, what does
20 environmental justice mean for water quality, what does
21 it mean for the watershed program. And I think the only
22 way we're going to be able to do that is for CALFED to
23 make a commitment to build partnerships with local
24 groups, with people that have expertise in environmental
25 justice to do that, but also needs to make a commitment

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1 to have staffing and resources to begin to proactively
2 put out a much stronger analysis around environmental
3 justice.

4 So that's kind of an overview of, I think, what
5 our letter talks about. And we have asked a few people
6 to come and talk about that. I will maybe ask them to
7 give really quick comments, if there's not any
8 questions. We can maybe wait until after.

9 CHAIRMAN MADIGAN: Byron.

10 MR. BUCK: I would agree. I think this has
11 been an overlooked issue. And I think one aspect of the
12 drinking water issue from an environmental justice
13 perspective is we need to look at -- to the extent the
14 program is pushing us in directions that are going
15 towards very high-cost solutions for meeting water
16 quality needs which tend to have an upward push on water
17 rates. And who that affects is the poor people of our
18 community and people of color. And we need to look at
19 the solutions CALFED is picking and looking at what is
20 the cost of those versus other things we might have
21 done.

22 MS. GUZMAN: I would like to add to that, Mike.
23 For us, especially water supply is also another big
24 program area where we want to see the environmental
25 justice issues that come about with different, you know,

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<p>1 the water management strategies that are being looked 2 at. And having this seen as a science just as much as 3 any other aspect of the program is critical to our 4 decisions.</p> <p>5 CHAIRMAN MADIGAN: Okay. Thank you. Go ahead.</p> <p>6 MR. ESTRADA: So maybe I might ask Arlene and 7 Kathryn and Michael to give just brief comments on the 8 preferred alternative and some of the recommendations 9 specifically.</p> <p>10 CHAIRMAN MADIGAN: Please. Come to the mic. 11 Give your name when you get to the microphone. We would 12 be happy to hear from you.</p> <p>13 MS. WONG: Good afternoon. My name is 14 Arlene Wong. I'm with the Pacific Institute. I want to 15 thank you very much for the opportunity to comment. The 16 Pacific Institute is a policy research organization 17 that's been working on natural resource policy and water 18 policy in California for, I guess, since its beginning, 19 some 13 years now. And I, personally, have been working 20 with a number of members of an environmental justice 21 coalition to just really help facilitate their 22 involvement in water policy, and more specifically, in 23 CALFED at this point. And I just wanted to point out 24 just -- if you look at the letter, it's signed by 25 members of the steering committee of this coalition,</p> <p style="text-align: right;">Page 186</p>	<p>1 environmental justice principles as it carries out its 2 different program implementations. And that's something 3 that I think we felt strongly that was not reflected 4 right now or yet in the preferred alternative as it 5 describes the different program elements.</p> <p>6 But we want to continue to work with CALFED to 7 see that these words or suggested words for a principle 8 do become deeds. And so we feel that really what we 9 need to see is CALFED incorporate dedicated and trained 10 staff, as well as the resources that will enable each 11 CALFED program to truly address environmental justice 12 areas.</p> <p>13 And we really do draw parallels to the way that 14 CALFED has adopted that. Its decisions must be science 15 based decision making. We feel that, equally so, it 16 must also have the capacity for environmental justice 17 based decision making.</p> <p>18 I hope there will be the opportunity for us to 19 continue this conversation with BDAC, or with the policy 20 group, with CALFED staff, whatever it takes to really 21 engage with members of this coalition who are concerned 22 about seeing environmental justice incorporated into 23 these policies and plans, and have experience in trying 24 to address it in the work that they've done and the work 25 that they've done in their communities and working with</p> <p style="text-align: right;">Page 188</p>
<p>1 which really is trying to represent a very diverse group 2 of mostly organizations in urban areas working on 3 environmental justice and other community issues. And 4 these are people who haven't really traditionally been 5 involved in water policy debates. And so this is new to 6 them, but they see very strongly the links between 7 things that are happening in CALFED and things that 8 they're trying to do in their communities.</p> <p>9 I wanted to really commend BDAC, the members of 10 the BDAC, for considering the comments that we've had, 11 and for actually including them in the recommendations, 12 though, I guess, there's still some difference between 13 what it means to be in the preamble or be a 14 recommendation. But, that said, I do think it is 15 really --</p> <p>16 CHAIRMAN MADIGAN: That's all right. We're 17 confused, too.</p> <p>18 MS. WONG: Is really an important first step 19 to -- to recommend the adoption of environmental justice 20 principles. And what I wanted to emphasize and really 21 echo from what Torri had just said is that, really, what 22 this requires is the ability and the capacity for 23 environmental justice to be adopted throughout the 24 CALFED program, within each of its program areas, so 25 that it can demonstrate that it can pursue these</p> <p style="text-align: right;">Page 187</p>	<p>1 other agencies.</p> <p>2 And I also point out that while perhaps, as a 3 whole, CALFED is not experienced in looking at 4 environmental justice, and maybe many of the agencies 5 are not, there are a number who are. And I do look to 6 the EPA, who has been working very hard at figuring out 7 how environmental justice must be addressed within EPA 8 agencies, within their other -- within their agencies.</p> <p>9 Region 9 has an environmental justice team. And it's 10 really time to start reaching out to those resources and 11 figuring out how CALFED agencies and CALFED itself can 12 start addressing that. It will take a lot of work, as 13 you all know, but I think it is necessary. And I think 14 what's embodied within the environmental justice 15 principles are also really embodied within CALFED's 16 principles as well.</p> <p>17 Thank you very much for this opportunity.</p> <p>18 CHAIRMAN MADIGAN: Thank you very much. Next, 19 please. Good afternoon.</p> <p>20 MS. ALCANTAR: Good afternoon. My name is 21 Kathryn Alcantar, and I am here on behalf of Latino 22 Issues Forum to comment on BDAC's draft recommendation 23 to CALFED on the preferred program alternative and 24 future implementation.</p> <p>25 But before I begin, I would like to tell you a</p> <p style="text-align: right;">Page 189</p>

<p>1 little bit about Latino Issues Forum for those of you 2 who are not as familiar with our organization. LIF is a 3 statewide nonprofit public policy organization that 4 advocates on behalf of increasing the quality of life 5 for California communities from a social justice 6 perspective.</p> <p>7 First of all, I would like to commend the 8 members of BDAC for your recommendation to adopt 9 environmental justice as an operating principle, and to 10 include this principle in the decision making process. 11 LIF feels strongly that CALFED must adopt environmental 12 justice as a guiding principle to accomplish its equity 13 goals. Not only does CALFED have both a responsibility 14 and an obligation to address environmental justice 15 issues, but to do anything less than making a strong 16 commitment to environmental justice would be 17 inconsistent with the precedent set by other federal and 18 state agencies in adopting environmental justice 19 principles into their policies, procedures, and actions. 20 That is, we hope CALFED will take a leap forward instead 21 of a leap back with respect to protecting low income 22 communities of color from continuing to bear the 23 disproportionate burden of environmental health risk.</p> <p>24 Specifically, LIF urges BDAC to recommend that 25 CALFED commit sufficient and equitable staffing and</p> <p style="text-align: right;">Page 190</p>	<p>1 communities of color, to children, and to other 2 vulnerable communities.</p> <p>3 Since public participation is at the root of 4 environmental justice -- of the environmental justice 5 principles, to have a strong environmental justice 6 program, CALFED must make a commitment to have a more 7 extensive, encompassing, and efficient outreach program.</p> <p>8 With all due respect to the complexity of water 9 in California, CALFED must still make an effort to 10 decrease the length and volume of materials, and to 11 increase the comment period if indeed it hopes to 12 receive useful public comment and feedback.</p> <p>13 Thank you for listening to our recommendations, 14 and hope that you will be able to bring those to CALFED.</p> <p>15 CHAIRMAN MADIGAN: Thank you. Good afternoon.</p> <p>16 MR. Warburton: Hello. I'm Michael Warburton, 17 and I'm project manager of the Community Water Rights 18 Project, which is fiscally sponsored by The Ecology 19 Center. This organization is celebrating its 30th 20 anniversary as a community based recycling and 21 environmental education supporter.</p> <p>22 The Ecology Center operates the curbside 23 recycling program in Berkeley under contract with the 24 city, and has been cultivating healthy rural/urban 25 interdependence through the operation of several ongoing</p> <p style="text-align: right;">Page 192</p>
<p>1 funding to support our environmental justice coalition's 2 recommendations.</p> <p>3 LIF also requests that BDAC recommend that 4 CALFED's water quality programs protect against the 5 cumulative impacts of pollutants on both environmental 6 and public health. In particular, LIF urges CALFED to 7 improve research and data collection related to the 8 health and environment of people of color and low income 9 populations impacted by CALFED programs. This request 10 is related to CALFED's evaluation of the capacity for 11 science based decision making. We hope that CALFED 12 gives the same consideration to the capacity for 13 environmental justice based decision making, and also to 14 consider the assumptions of science based decision 15 making, especially with respect to cumulative health 16 effects.</p> <p>17 For example, because drinking water is just one 18 route of exposure for hazardous or toxic contaminants in 19 water, another being through frequent consumption of 20 contaminated fish, as is in the case of many subsistence 21 fishing communities around the Bay-Delta, CALFED 22 programs must be designed to address the compounding 23 health effects of multiple exposures and/or multiple 24 contaminants to various communities. Cumulative impacts 25 of pollutants are of special concern to low income</p> <p style="text-align: right;">Page 191</p>	<p>1 farmers markets. We're active members of the new 2 environmental justice coalition, supporting the two new 3 representatives on BDAC. And we are proud cosigners of 4 the recent letter advocating the adoption of explicit 5 environmental justice principles as elements in any 6 CALFED solution to California's water dilemmas.</p> <p>7 We are happy to see the inclusion of 8 environmental justice language in the draft 9 recommendation on the preferred alternative, and we look 10 forward to working with various agencies and 11 organizations as that language is given meaning. At its 12 root, environmental justice is all about treating 13 diverse groups fairly while ensuring the ecological 14 sustainability of the systems which ultimately support 15 human communities. That's the challenge ahead.</p> <p>16 There are disproportional impacts associated 17 with almost any water management scenario. How can you 18 balance watershed management decisions with the demands 19 of fisheries, farmers, foresters, and urban water users, 20 and the natural system supporting the whole kit and 21 caboodle?</p> <p>22 CALFED is certainly the most promising 23 institution to show up on the radar screen for quite 24 some time. But the disproportionate impacts are often 25 most acutely felt by economically or politically</p> <p style="text-align: right;">Page 193</p>

<p>1 vulnerable communities. Those are the places we've got 2 to keep watching to see if our commitments to justice 3 are meaningful.</p> <p>4 Some of the same laws which protect the 5 long-term interests of more vulnerable communities are 6 also important in guarding the long-term interests of 7 everybody else in our society as well. Our project is 8 particularly concerned that some elements of the CALFED 9 program might move forward with too little attention to 10 the idea that most of the water being managed is subject 11 to a public trust in this state. This places most -- 12 one of our most precious resources at risk. That 13 resource may not be so much the water itself as the way 14 we think about that water and how we make decisions 15 about how it might be used.</p> <p>16 The California Public Trust Doctrine provides a 17 framework within which we can make responsible decisions 18 about the future, because it embodies a set of 19 obligations of the state to present and future 20 generations of California citizens, regardless of their 21 status as voters or economic actors.</p> <p>22 Ever since my own daughter arrived, I felt a 23 growing urgency to find some way to step back from the 24 short-term economic calculus that always seems to leave 25 something out, and which has wreaked such havoc on the</p> <p style="text-align: right;">Page 194</p>	<p>1 what we're asking for here in the two bullets where I 2 think most of our comments were placed, there is a 3 paragraph that starts with -- they're both on page six.</p> <p>4 CALFED commits to every broad and site-specific measure 5 for achieving CALFED goals. And also the last bullet, 6 CALFED will adopt environmental justice as an operating 7 principle.</p> <p>8 I think that first bullet gets at our third 9 point, which is -- at least makes us strive towards that 10 in terms of what are some of the analyses impacts that 11 we're actually looking at. And I think it adequately 12 makes a commitment to addressing environmental justice 13 problems, both existing and potential impacts of CALFED 14 actions, and also setting up some clear criteria to 15 address environmental justice and cumulative impacts.</p> <p>16 I think what we're primarily asking for 17 beforehand is, one, a commitment for CALFED and 18 recommendation from BDAC to adopt the proposed 19 environmental justice principle which embodies a lot of 20 the specific things that we're asking for.</p> <p>21 And then second of all, we don't have 22 recommendations for this specifically now, is to take 23 that general principle and figure out what are the goals 24 and objectives within each of the program areas that 25 need to be in there to address environmental justice.</p> <p style="text-align: right;">Page 196</p>
<p>1 California landscape throughout our history. In order 2 for public agencies to meet their continuing obligations 3 under law to ensure that management decisions continue 4 to benefit the public, a transparency in information and 5 decision processes regarding water use and availability 6 is essential.</p> <p>7 The Public Trust Doctrine has been a valuable 8 ingredient in economic transitions in the past, and it 9 affords a very useful framework for combining changing 10 scientific understanding of present conditions with 11 legal principles to arrive at socially desirable 12 decisions that are sustainable in the long-term. It 13 also serves to broaden the scope of public 14 participation, because every citizen is a beneficiary of 15 the trust.</p> <p>16 We appreciate the opportunity to join with our 17 coalition partners in calling for an explicit commitment 18 to incorporating environmental justice principles in the 19 programmatic actions of CALFED. And we certainly look 20 forward to more opportunities to work with CALFED 21 agencies in giving meaning to whatever language is 22 adopted.</p> <p>23 CHAIRMAN MADIGAN: Thank you very much. Torri, 24 back to you.</p> <p>25 MR. ESTRADA: Yeah. So I think the crux of</p> <p style="text-align: right;">Page 195</p>	<p>1 And then the third point, to begin to engage in 2 a more sophisticated analysis beyond a demographic 3 analysis. That is primarily what CALFED has been using, 4 but to actually expand the analysis of CALFED to look at 5 other issues like fish contamination and other viable 6 justice issues that we think are important.</p> <p>7 The fourth thing we're asking for is, again, 8 representation from the environmental justice community, 9 both rural and urban, in governance, and then decision 10 making and oversight of program areas.</p> <p>11 And then fifth, a commitment for equitable 12 staffing and funding to actually achieve the four prior 13 things that I've talked about.</p> <p>14 So that's -- that's the baseline of our 15 recommendation that we submitted in our comments. So -- 16 and I'm not sure if it was -- all that was reflected 17 here, but that's kind of what we want to put on the 18 record.</p> <p>19 CHAIRMAN MADIGAN: Let me try it this way. We 20 are -- and then I'm going to ask Steve to comment on it 21 as well. Since we are going to be embarked on the 22 business over the next several days of trying to redraft 23 some of this to reflect the comments, let Sunne and I 24 take your input, as well as a part of that, and see if 25 we can't find ways to incorporate your input into the</p> <p style="text-align: right;">Page 197</p>

<p>1 document that we would then circulate for the 2 consideration of the group, and also for the information 3 of the CALFED policy group as we begin to wind it into 4 our larger program.</p> <p>5 Steve, let me ask you for your comments as 6 well, since in some measure, this is really being 7 referred to you.</p> <p>8 EXECUTIVE DIRECTOR RITCHIE: Yeah. Actually, I 9 think certainly CALFED would like to know what BDAC has 10 to say about this as a group. But I think a number of 11 these points we will actually probably take directly to 12 the policy group for their consideration as part of the 13 package. I know we've dealt with some of these issues 14 and the comments received in the environmental 15 documents. I think we'll want to take another look at 16 how we've responded to those and how this fits with 17 that, and are there additional things that we want to 18 make sure we get into the package as part of it.</p> <p>19 So I'll take this to the CALFED -- I'll 20 probably take this letter to the CALFED policy group as 21 a series of issues to be dealt with, with a 22 recommendation of how we approach those. It would not 23 be for the meeting next week. Probably -- it would 24 probably be for the meeting after that, which would be 25 sometime in May, mid to late May.</p> <p style="text-align: right;">Page 198</p>	<p>1 this point, that actually we could move it quicker. So 2 this is my --</p> <p>3 VICE CHAIR McPEAK: Let me see if I understand 4 though what I -- I think Mike and Steve said in 5 responding, Torri, to your issue. The letter is very 6 extensive, so it has a lot of detail in it. And this 7 would be a part of what gets transmitted as information, 8 as everything else that we've had, at the next meeting 9 of the policy group.</p> <p>10 But the agenda constrained, what gets actually 11 published is not a small consequence. It's a published 12 agenda is what, I think, Steve was saying. I mean, we 13 couldn't get things on here, too, because there's laws 14 that govern that. But we're slated to give a report, so 15 we would pen that.</p> <p>16 The definition on page two of your letter needs 17 to be reiterated, I think. I mean, Mike and I have been 18 looking through this. It's referenced in the bullet 19 points on the recommendation we've all been discussing, 20 but it's not elaborated. I think that's very good 21 wording. And then you've gone to some fairly extensive 22 effort on the program comments as to what issues are -- 23 are examples of items that need to be addressed from an 24 environmental justice perspective. I mean, that gives a 25 lot of very specific things to at least get into the</p> <p style="text-align: right;">Page 200</p>
<p>1 MR. ESTRADA: I want to ask you why you would 2 put that off for, and not for the next meeting?</p> <p>3 EXECUTIVE DIRECTOR RITCHIE: Well, I put it off 4 just because we haven't had a chance to formulate a 5 recommendation on it for them. It's not agendized for 6 the meeting. We've already got a set agenda and a 7 package of things to deal with. So this, while it won't 8 be informative in one thing, I don't think there's -- 9 there would be enough to make a specific recommendation 10 on it for them to consider that, digest it, and really 11 feel like they were going to make a good decision. 12 That's just a matter of timing as much as anything else.</p> <p>13 MR. ESTRADA: Uh-huh. Well, I guess I would 14 just like to put on the record that I feel -- I feel 15 that we're behind the ball already with this stuff. 16 And -- and it's indicative that, you know, once again, 17 we're kind of last on the agenda here. And I really 18 feel that we need to move quickly on this issue. I 19 think we put a lot of personal time into this and to try 20 to engage CALFED staff in these very issues. And I 21 would actually like to see a commitment before May to 22 move this forward. So however BDAC as a body and others 23 around here could recommend that, I would actually urge 24 you to do it quicker than May. So that was our hope by 25 investing the time and being as specific as we can be at</p> <p style="text-align: right;">Page 199</p>	<p>1 preferred program alternative.</p> <p>2 What's -- to just respond, again, I'm in the 3 habit of being pretty candid and direct here, I think 4 the question that you've put on the table that needs 5 some discussion is resources on further analysis. And 6 I -- I am as -- I'm pretty familiar with all this stuff, 7 but I think we need to have, you know, some more -- some 8 more specifics as to what would that mean. And that's, 9 personally, what I would have to have a discussion with 10 staff about. Okay?</p> <p>11 Having said that, one of the things that just 12 occurred to me, we spent a lot of -- you and I spent a 13 lot of time in other circles on the notion of smart 14 growth. It's not even referenced here. And I like the 15 three Es, so I might try to slip in the notion of 16 equity, environment, and economy as a part of a 17 framework that CALFED should recognize.</p> <p>18 MR. ESTRADA: I think that would be useful.</p> <p>19 VICE CHAIR McPEAK: Pardon?</p> <p>20 MR. ESTRADA: I think that would be useful.</p> <p>21 VICE CHAIR McPEAK: Right. And it's not 22 balanced, it's integrated. In order to have long-term 23 economic prosperity, long-term environmental prosperity, 24 you have to have more of both, shared with more people.</p> <p>25 MR. ESTRADA: I guess, to reiterate a concern</p> <p style="text-align: right;">Page 201</p>

1 that I have, and I guess moving towards the ROD what I
2 would like to see, because I'm fearful, if we don't have
3 a strong environmental justice analysis, and I know
4 CALFED staff is committed to putting that together, but
5 if we don't do that, then we run the risk of moving
6 forward with actions and not actually knowing if we're
7 actually making impact on equity, on environmental
8 justice. So that's part of my reservation about keep on
9 pushing this back. And we're willing to engage as much
10 as we can to help move this forward. So that's just my
11 reservation.
12 CHAIRMAN MADIGAN: Yeah. I think --
13 MR. ESTRADA: We've been late in the game
14 already, so --
15 CHAIRMAN MADIGAN: I think we're picking it up
16 as of today. We're going to try to -- we're going to
17 sit down and start reflecting notions in the document.
18 We will bring it back to this group at its next meeting.
19 And as we have made progress on this, as we have made
20 progress on anything else today, we will reflect it with
21 our -- in our report to the policy group next week.
22 MR. ESTRADA: I would appreciate that.
23 CHAIRMAN MADIGAN: Next week. I have Judith,
24 and Roberta, and then Stu.
25 MS. REDMOND: I think, all along, -- I think I

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1 have a comment that maybe makes this more specific in
2 terms of what it might involve for CALFED staff. All
3 along, we've talked about having a program that's
4 science -- you know, that is committed to scientifically
5 based decisions. And yet I think that CALFED has seen
6 the definition of scientifically based in a very narrow
7 way as, basically, you have biologists and certain --
8 you don't have social scientists look at these ongoing,
9 many, many ongoing studies that are costing a lot of
10 money, a lot of public resources.
11 And so I think that one way -- one question I
12 have for CALFED is, are there social scientists on
13 staff? And I was sort of amazed at the last meeting
14 when we had a report of what sounded like a fairly
15 extensive and complicated study that was going on about
16 water management. It may be the same study that's on
17 the agenda today. And Martha Guzman asked the
18 presenter, well, it would be wonderful if you could
19 perhaps incorporate employment figures and the impacts
20 upon employment in your study. And the presenter said,
21 oh, no, that kind of data is not available. And what
22 that made me realize was that there aren't social --
23 there aren't people on the CALFED staff that know where
24 to get data about employment. And so -- because that
25 data is obviously well -- very much available. And you

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1 simply need people who were qualified to do these kinds
2 of community impacts that we really should have been
3 doing all along.
4 So one very specific question that I think
5 should be raised at CALFED right away is are we
6 adequately staffed to look at very important social
7 questions. This is not just a biological system. It's
8 a social system as well that we're dealing with.
9 CHAIRMAN MADIGAN: Okay. Thank you. Roberta.
10 MS. BORGONOVO: I believe I referenced a letter
11 that's in the back, and it also includes the
12 environmental water caucus priorities for CALFED. And
13 we, in fact, endorse Torri's suggestion that CALFED
14 adopt the environmental justice principle, that it
15 develop a program with appropriate program goals and
16 objectives to address these issues, that it engage
17 community actors, that there be equitable staffing and
18 funding, support, and just picking up on what Judith
19 said, the proper people to do the analysis, the kind of
20 resources that's needed as well as the representation in
21 the CALFED program as it goes forward.
22 So as long as you are taking this suggestion
23 forward as part of the progress report, I don't want to
24 see it sit there for two or three months, because I
25 think we all want the kind of record of decision that is

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1 broad enough to really address all legitimate issues.
2 And this is a legitimate issue that has come before
3 CALFED before.
4 CHAIRMAN MADIGAN: All right. I understand.
5 Stu.
6 MR. PYLE: This has been a very positive
7 discussion up to this point. I have a -- some questions
8 to insert here. I have a very difficult time coming to
9 grips with how water planning can further foster the
10 fortunes of people that you represent. It seems to me
11 that the objective of everybody at this table in terms
12 of water planning is to have water quality available and
13 adequate supplies with good quality, protect the health
14 of everyone, be affordable, not cost an arm and a leg,
15 that there is recreational and environmental access
16 available to everyone, regardless of whether you are
17 from Mendota or whether you're from the Beverly Hills
18 Begonia Club.
19 It seems to me that the -- this is without
20 regard to specific groups of individuals on one hand.
21 On the next hand, it seems that where there are projects
22 that will impact a group of people, whether it's Petrie
23 and the residents of Mendota today, that the -- that the
24 intense investigation of whether that is a positive or a
25 negative to that group of people kind of follows two or

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<p>1 three levels below the type of planning that we are 2 faced with here. It becomes a -- a problem in the 3 implementation. 4 So all I'm doing is kind of raising these 5 things just to tell you that I have difficulty, when you 6 talk about formulating a long-range, comprehensive water 7 planning, that why -- in seeing why there's any 8 difference between one segment of the society and 9 another segment of the society. 10 CHAIRMAN MADIGAN: Let me try for a second. 11 God knows I wouldn't represent myself as being an 12 expert. But I think it falls under two or three things 13 that we have already discussed around here. One is that 14 there are no significant redirected impacts. What it is 15 that we do here should follow that principle. One of 16 the things that it's fair to say we haven't looked at is 17 whether or not decisions of this group have unintended 18 consequences for -- for economically disadvantaged 19 groups. And one of the things that's pointed out today 20 is the cost of water. I mean, if we quadruple the cost 21 of drinking water, that's a clear economic disadvantage 22 to those least able to afford drinking water. I mean, 23 there's -- different people with different views could 24 probably point out 25 different examples around here. 25 But I think it is fair to ask this group to</p> <p style="text-align: right;">Page 206</p>	<p>1 shape decisions about how those -- how those programs 2 are implemented. 3 The other point I have is -- goes back to the 4 whole idea of the preamble, and hearken back to what the 5 CALFED legal counsel talked about in terms of what the 6 action is before CALFED, in terms of the record of 7 decision and the certification process. And I just want 8 to make the point that, preamble or no preamble, we 9 think that you have to have an adequate preferred 10 program alternative before you can have an adequate ROD 11 and certification. And a good preamble is not going to 12 save that process. So I think that needs to be 13 reflected in the rest of the discussion. 14 CHAIRMAN MADIGAN: Okay. Thank you. Martha. 15 MS. GUZMAN: Just a quick point and a question. 16 This is revised in your new letter, but on page six on 17 the fourth bullet, I just wanted to add in rural and 18 urban watersheds. I know that rural is often just 19 looked at as agricultural in history. But there is 20 actual communities there. 21 And the question I have is on bullet one. The 22 final sentence -- well, I'll read the last two just so 23 it makes sense. CALFED will create clear criteria for 24 determining third party environmental justice and 25 cumulative impacts. This will be done and revisions of</p> <p style="text-align: right;">Page 208</p>
<p>1 think of the decisions that we make with those kinds 2 of -- with that kind of a perspective as well as the 3 other kinds of perspectives. And there are a number of 4 them reflecting the diversity of this group anyway 5 that -- that we have all been encouraged to think about. 6 So it seems to me that what we will be doing 7 over the next several days is looking at some of those 8 solution principles and saying, you know, there's -- 9 there either is or is not a gap in our thought process 10 on this particular issue. And if there is, then we 11 should -- we should evaluate it, because it's a part of 12 making sure that this is a program that works for, you 13 know -- I mean, you'd hate to be trite about all 14 Californians and things like that, but, in fact, that's 15 what we're trying to do. 16 Brenda, then Martha, then Howard. 17 MS. JAHNS-SOUTHWICK: I have a couple of points 18 to make right now while we're still on the issue of 19 environmental justice. I would just like to point out 20 that I think that's consistent with what we've always 21 advocated, which is that you have to have grassroots 22 level participation in these solutions. Because, 23 ultimately, at the implementation level, they are 24 community based and they're affecting real people, and 25 you need to allow those people the opportunities to help</p> <p style="text-align: right;">Page 207</p>	<p>1 the plan made by a process covered elsewhere in the ROD. 2 Where is this elsewhere? 3 CHAIRMAN MADIGAN: One moment. It's your 4 paragraph. 5 VICE CHAIR McPEAK: Yeah. No, these are your 6 words. So it's the -- it's the modification process 7 that is supposed to be spelled out in the record of 8 decision and the certification. And good question of 9 Martha, it's not now spelled out in the preferred 10 alternative. It needs to be spelled out in the ROD -- 11 EXECUTIVE DIRECTOR RITCHIE: It will be spelled 12 out in the ROD as opposed to the preferred program 13 alternative. 14 MS. GUZMAN: Okay. Well, yeah. Okay. I just 15 thought maybe it was already somewhere, but since -- 16 EXECUTIVE DIRECTOR RITCHIE: No. It would be 17 in the ROD and certification package. 18 CHAIRMAN MADIGAN: Okay. And Howard. 19 MR. FRICK: I don't think there's any question 20 in my mind that the water situation in California today, 21 as Steve indicated this morning, Steve Hall, we've given 22 up a million four acre feet. The negotiations with the 23 Feds aren't going very well, and Trinity and all the 24 regulatory problems and Babbitt taking the stringent 25 approach he is on interpretation of the regulatory</p> <p style="text-align: right;">Page 209</p>

1 requirements, we'll be at least two million acre feet
2 short, maybe more. We've got a million acre foot draft
3 at least in the central valley. I don't think we can
4 continue to put up with that. If that equates with
5 three million acre feet, the choke point is the Delta.
6 You have no impact in the Sacramento valley. They can't
7 help you on water use efficiency. The goals of water
8 use efficiency haven't been spelled out. I think we
9 know what they are and they're rather -- the potential
10 gains in the San Joaquin Valley are relatively minor.
11 You will see, if this continues, if it takes another 20
12 years to get some kind of a solution in place, I predict
13 you will see over a million acres out of production of
14 irrigated agriculture. And that will very heavily
15 impact with communities in the San Joaquin Valley,
16 especially the Hispanic community for lack of jobs.
17 CHAIRMAN MADIGAN: Thank you. Torri.
18 MR. ESTRADA: Just one last comment just to
19 come back to who is being impacted by water planning at
20 this level. And I think it's important for us to
21 realize, in a lot of other areas like air and land, we
22 actually have pretty sophisticated environmental justice
23 analysis that both the federal level EPA is engaged in.
24 Region 9 and Region 5 actually have a commutative impact
25 assessment that addresses environmental justice. And

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1 they do that at the programmatic level. They do that
2 because if you don't ask the right questions, if you're
3 not asking the right questions about impact, and you
4 don't even know what the impact is, and I think in the
5 issue around water, it hasn't really been addressed.
6 There isn't a stand-alone analysis around environmental
7 justice and water.
8 Realizing that, I think what we're asking for
9 is that we come up with one at the programmatic level,
10 so it actually, as we move forward with site-specific
11 actions, with environmental review, that we're not
12 reinventing the wheel every time. I'm not sure if it --
13 if legally it should be in the programmatic review, but
14 there needs to be a commitment on CALFED's end to come
15 up with that analysis.
16 And one of the immediate issues that raised my
17 hair was the issue around fish consumption. We don't
18 even have a very good analysis of how we're moving --
19 going to move water around the Delta, what
20 cross-channels are going to close, what impact does that
21 have on subsistence fishing, what impact does that have
22 on fishing contamination. We don't have an analysis, we
23 don't have a way of looking at that.
24 So I'm also thinking that there are other
25 problems out there that we're not even addressing. We

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1 don't even have a way of identifying what those issues
2 are, but that's an immediate one. So this is what we're
3 asking for. In other areas, like air and land, there
4 has been very specific studies showing that people of
5 color and low income people are disproportionately
6 impacted by environmental actions and policies. We're
7 making that leap to water. What we're asking CALFED to
8 do is to do that analysis to make sure that we know what
9 impacts are out there and we have a way of mitigating
10 that. So it's a way of getting ahead of the curves, but
11 also puts us in a position to know what the impacts
12 we're having.

13 So that's kind of where we're pushing this.
14 And we realize, with CALFED, that this is a new area to
15 move into. But we feel there's a lot of precedent.
16 It's going to come down the line. And there's an
17 opportunity here to really get ahead of that curve. And
18 we can do that gingerly, we could do that in a way that
19 makes people feel comfortable, but we need to be -- need
20 to take a leadership role here and figure out how we
21 address those issues. So that's what we're pushing for.

22 VICE CHAIR McPEAK: And I assume that you're
23 willing to help us, or help CALFED, on the definition,
24 which is what I was trying to say earlier. When I read
25 through the letter, the last three pages are -- have a

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1 lot of specifics to be -- that are very helpful as
2 examples of where attention needs to be paid or what is
3 the dimension to these water issues as you would view
4 them from a social equity perspective. And this give --
5 this is very concrete. I shouldn't use the word
6 concrete in talking about water. It's very tangible,
7 very specific about so what are we talking about.
8 Steve is now in the room, but I was asking him
9 so -- his ideas about so what do we do to take the
10 spirit and concept that you have laid out and translate
11 it into something now, both in the preferred --
12 preferred, whatever, the alternative -- what is that
13 second P? Preferred program. Okay. Preferred
14 alternative. Anyway, solution. And then what will be
15 done as a framework for analysis in the implementation.
16 Because I do think, in all practical approach, we're
17 going to need to look at -- at least a two-stage
18 process, and figure out what can be done that is timely,
19 substantive, and -- and responsive for the time frame
20 we're working on, which is between now and September or
21 so. I don't know exactly where the -- the CALFED
22 agencies are. And so that is going to require some help
23 on your part to define that and say, okay, what would --
24 let's say we wanted to do the analysis today. I need --
25 I want to know what does that exactly mean so I can get

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1 something done. So we're going to need your help.
2 MR. ESTRADA: Yeah. And that's -- the
3 coalition is willing to do that. And we do that knowing
4 that there's a commitment that we're going to move ahead
5 on that. So we'll definitely commit the time to do
6 that. And we actually know the people to call and how
7 to put that together. So we're willing to have this
8 partnership and move that forward. So that's what we're
9 offering here.
10 CHAIRMAN MADIGAN: All right. Since we are
11 going to bring this back in a few weeks, and since we
12 have the governance issue on the agenda for today, I
13 would like to ask your indulgence to wrap this item for
14 the day. Let us retreat to the darkened hallways
15 somewhere and try to draft another document, which we
16 will get out to you for your review as soon as possible
17 precedent to a meeting of this organization in May, date
18 yet to be determined. Yes? Yes. Alex.
19 MR. HILDEBRAND: In going along with that, I
20 would like to call attention to the fact that I did send
21 a fax to you and Sunne.
22 CHAIRMAN MADIGAN: Yes, thank you.
23 MR. HILDEBRAND: With some -- some of them are
24 just little things. Some of them are a little more
25 substantive. I have no quarrel with whether these go on

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1 the preamble or somewhere else, just so they're in the
2 document. But -- but I do think the rewording that I
3 have suggested in two or three paragraphs here is pretty
4 important. The Central Valley Ag Caucus has sort of the
5 same problem that we have in that we have to have
6 language, in order to have unanimity, would have to have
7 language that's acceptable both to the Delta people,
8 others who are affected by the manner of flow across the
9 Delta, and those who use exported water.

10 And we did arrive at a -- what amounts to a
11 process that we can all agree to as to how those
12 differences would be resolved. And I have similar
13 language proposed in this fax, which is not identical.
14 In fact, I don't know that the other has been quite
15 finalized. But in spirit, it's the same thing as the ag
16 caucus is coming up with as how to bridge this gap. And
17 so I would ask that you give pretty serious thought to
18 the changes that are proposed there regarding the two or
19 three items.

20 CHAIRMAN MADIGAN: Thank you. All right. I
21 understand. We did get it. Thank you for that.

22 Sunne.

23 VICE CHAIR McPEAK: Mr. Chairman, I rarely have
24 the opportunity to be deputized to represent the
25 Los Angeles Area Chamber of Commerce. In fact, I don't

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1 think it's ever happened before.

2 CHAIRMAN MADIGAN: Not in my lifetime.

3 VICE CHAIR McPEAK: But EZE Burts did call
4 to -- right, not in your lifetime. Not in anybody
5 else's either. EZE Burts called to apologize that he
6 wasn't able to be here, but did want me to share with
7 you that the recommendation as it was drafted, he
8 thought was going very much in the right direction. He
9 thought it needed to be stronger in terms of actions
10 that would be taken around facilities in stage one, but
11 he did want to support that -- the essence and the sense
12 of what we were recommending.

13 CHAIRMAN MADIGAN: Thank you very much. Okay.
14 Let's move on to the next item on the agenda,
15 governance. And I'm going to call on Kate. Where is
16 she? There she is. Stop. All stop. Hang on. We're
17 going to take a couple minute break here, guys.

18 (A break was taken.)

19 CHAIRMAN MADIGAN: Okay. Kate.

20 MS. HANSEL: We're going to focus today on
21 interim governance. But this slide, just to put to you
22 in context of where we are. What we've talked about
23 with interim governance, this is the time period until
24 legislation gets passed to establish long-term
25 governance. So today we're going to talk about what are

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1 the mechanisms to kind of describe the interim process,
2 and we'll focus on a framework agreement and public
3 involvement. And I wanted to give a quick update before
4 we get into that on long-term governance, where you
5 focus most of your time.

6 What we're doing right now in time frame is
7 putting our recommendations, making our changes to the
8 governance proposal, and putting that as a -- still a
9 draft proposal in the final EIS. So it's draft proposal
10 in a final EIS, because it's part of the implementation
11 plan. The final proposal, we're hoping to have some of
12 the pieces put together at the time of the ROD, but
13 nothing goes -- it stays as a proposal until legislation
14 is adopted. So that's the time frame for that one.

15 Okay. On the long-term governance update, you
16 spent a lot of time at your December meeting in this
17 room on the principles for governance. Those comments,
18 and comments from the BDAC work group on governance, and
19 comments from the agencies have been starting to try to
20 incorporate those comments and more in a draft proposal.
21 That new proposal is a February proposal, and I'm going
22 to be making changes again to get it into the final EIS.
23 Legislation has been introduced for CALFED long-term
24 governance to create a commission. It's a very short
25 bill, Assemblyman Machado's bill AB 1839. At this

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<p>1 point, nothing is set in hearing to be -- to hear that 2 bill.</p> <p>3 Assemblyman Machado and Senator Costa did have 4 an information hearing, a joint legislative hearing on 5 governance in February. Both governance and finance, 6 and pretty much the governance focused a lot on the 7 interim, actually, not on the long-term proposal, but 8 how to get -- to make improvements in the interim 9 process right now with policy group and right after the 10 ROD.</p> <p>11 Some of the key remaining open issues of the -- 12 there's many open issues still in the long-term 13 governance. But some of them are science program and 14 functions, EWA, structure and decision making, 15 membership, and, again, the legal structure for this 16 commission. We talked about it being a joint entity. 17 It might also be -- what does it mean by being a joint 18 entity? Is it a state commission with federal 19 participation, is it a state/federal charter, is it a 20 state/federal entity that's actually establishing state 21 and federal law as a -- as a commission? So it's -- 22 we're spending a lot of time, since December, working 23 with the federal lawyers on what they feel is 24 constitutional policywise, what are some of the 25 constraints. And we can have another presentation on</p> <p style="text-align: right;">Page 218</p>	<p>1 attachment A, is the framework agreement outline. We're 2 at an outline stage. This is not -- we're not 3 wordsmithing the text. What we're going to ask from you 4 today is if there's any changes to the outline in terms 5 of elements to add or change, or thoughts to go into 6 what we -- when we start drafting the framework 7 agreement, your thoughts about what could go in these 8 elements. But I'll go through them fairly quickly so we 9 have time to discuss them. But let me turn to that one, 10 attachment A.</p> <p>11 First one is really listing some of the 12 principles for interim implementation, and not repeating 13 the long-term governance principles, but really thinking 14 of, in the interim, we don't have -- remember, with a 15 policy group, you have no authority in the policy group. 16 You're relying all the authorities in existing agencies 17 to try to get many programs moving forward together. So 18 these principles would start to list some of the related 19 issues for interim implementation. And I won't go 20 through them, but this is a list of about six right now 21 in the outline, page one of the outline that we're 22 talking about including.</p> <p>23 The second topic is policy group. This is one 24 we've spoke with BDAC about before, continuation of 25 policy group, what would the membership be, describing</p> <p style="text-align: right;">Page 220</p>
<p>1 that at a future meeting.</p> <p>2 Next. Okay. Interim. As I said, until 3 legislation is adopted to put a new governing structure 4 together, it's been recommended and proposed by the 5 CALFED agencies and BDAC to continue the current 6 process, but try to make as many improvements to the 7 current process as possible. And to do that, we would 8 propose putting that description of that process and 9 those improvements in a framework agreement. There's a 10 current framework agreement from '94, but it's very 11 outdated in terms of it doesn't apply to implementation 12 of the CALFED plan. It applies to development of a 13 long-term solution. It has a lot of older terms in 14 terms of BDOC. And it's time, if we move into 15 implementation after the ROD, to put a new framework 16 agreement together to talk about how the state and 17 federal agencies and the public and the stakeholders 18 work together, in the interim, to implement the ROD, the 19 recommendations in the ROD and the plan. So I see that 20 it's not the governance plan and EIS that really is the 21 document that pulls us together. It's the framework 22 agreement. It describes how we all work together.</p> <p>23 Okay. I'm going to go through -- actually, in 24 your packet is an outline of the framework agreement. 25 There's a tab on governance. And after the memo,</p> <p style="text-align: right;">Page 219</p>	<p>1 the framework agreement, some of the decision making 2 rules, responsibilities, and how the public would be 3 involved in that decision making process. Again, it 4 would be a public meeting, and if there's a public 5 advisory group meeting together with that group. So 6 that's that topic describing in the framework agreement.</p> <p>7 The third item is the Bay-Delta program. We 8 need to have an agreement if the Bay-Delta program is 9 going to continue after the ROD and what its 10 responsibilities would be. Is there a staff, an 11 executive director continuing, and for implementation, 12 what part of implementation are they involved in, and 13 how are they funded. Currently, there's a cost-sharing 14 agreement and a contract between the state and feds to 15 share the cost of the Bay-Delta program 50/50. That 16 would need to be resurfaced and continued. It expires 17 in about a year.</p> <p>18 The fourth is public and local involvement. 19 And you've touched on this one today. And we're going 20 to talk about it in the next agenda item. But in the 21 framework agreement, once it's -- BDAC has had input in 22 the agencies, we should describe in the framework 23 agreement how we're going to do public involvement at 24 the local level and at -- if we have a broad public 25 advisory board.</p> <p style="text-align: right;">Page 221</p>

1 Implementation procedures, this is a pretty
2 important element that we haven't really pinned down.
3 We've often talked about what programs are in and which
4 ones are out of the CALFED process. It's probably the
5 framework agreement, some attachment to the framework
6 agreement, that would list those specific programs,
7 funding sources, that are under the purview or review of
8 the policy group. Again, policy group has no authority.
9 So, right now, as you know, policy group reviews all the
10 ERP money that comes to CALFED. Is that true for the
11 other programs, levees, water use efficiency, recycling?
12 Do they have a role in reviewing work plans and
13 having -- you know, turning into that kind of body where
14 they look at all the moving parts? Remember the role of
15 policy group in the interim, just like the commission in
16 the long term, is program direction, balance, and
17 integration. So what do they need to see and touch to
18 provide that -- to serve that function? And this should
19 be described so people understand the process in the
20 framework agreement.

21 Water operations was in the old framework
22 agreement. Needs to be continued and expanded in the
23 new framework agreement. You talked about this in one
24 of your recommendations. How is it -- what is the
25 decision process for the alarms that go off for the

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1 decision process, operating protocol, and public
2 notification. Science integration, this one needs to be
3 described in the interim as well. How are we -- what is
4 the scope of the science program and some of the
5 responsibilities. I expect a lot of that text would be
6 in the draft governance proposal and referred to in the
7 framework agreement. But this also is where we're
8 really spending some time in the science program to
9 start making that link to the regulatory side of the
10 program. It's not just the science program that advises
11 and has input on the CALFED program, but it also advises
12 on the biological opinions and the regulatory actions.
13 So it's the same group of -- of data that's going into
14 that.

15 The last two, the congressional and legislative
16 communication, how we're going to do that, and what
17 tools we're using to work and -- with congress and
18 legislature. And a sunset clause has been -- needs to
19 be included so that we have an ending and a point to
20 check in about where are we on governance for CALFED,
21 are we still at an interim two years from now, three
22 years. People have proposed different time periods to
23 set the sunset clause.

24 So what I wanted to ask of BDAC today is a
25 sense of whether these seem to be the right elements to

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1 go in a framework agreement. Again, this is basically a
2 memorandum of understanding between the state and
3 federal agencies. That's the way I understand it. And
4 the purpose of it is to describe the process for
5 implementing the decisions that would be in the ROD and
6 the programs that would be in the EIS/EIR. So it's very
7 much of a process document, and we need a place where we
8 get into some detail on how we describe that process.

9 CHAIRMAN MADIGAN: Hap, why don't we start with
10 you and ask you for your comments on this, and then lead
11 us into this discussion.

12 MR. DUNNING: Okay. She's done a very
13 wonderful job putting this together, and I agree with
14 everything she said. There's just one point I want to
15 make, and that is one thing that's under consideration.
16 If you remember the June 1994 framework agreement, it
17 really addressed three areas, water operations, water
18 quality, and the Bay-Delta program. Only two of those
19 are covered here. There's nothing on water quality.
20 And I think Kate is looking into whether that's needed
21 any longer. The idea was to have close coordination.
22 That, of course, was followed by the Accord in December
23 of '94. Maybe there's no need now to go into the water
24 quality. But that, I think, will be examined as a
25 question.

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1 CHAIRMAN MADIGAN: Okay.
2 MS. HANSEL: I have been looking at that, and
3 just to talk to the EPA and the Water Board. And I
4 wasn't around in '94, but that was one of the prime
5 issues that pulled CALFED together, as I understand, the
6 water quality standards. And that is not as big of an
7 issue right now. It would be a continued coordination
8 on water quality with the Water Board and the standards
9 process. But I don't think it's as pressing an issue.
10 But we're definitely open to figuring out how that could
11 be added or not.

12 CHAIRMAN MADIGAN: All right. Thank you.
13 Alex, then Mike, then Bob.

14 MR. HILDEBRAND: The thing that puzzles me
15 about all this is that, not just Kate, but everybody up
16 through Babbitt, talks about the future here as if it's
17 all implementation. It certainly is not. It's going to
18 be very evident from our discussion today that we
19 haven't begun to develop an adequate through-Delta
20 system. That's a disaster that stands now. But we
21 haven't figured out what we're going to do about the gap
22 between supply and demand. There are a lot of very
23 basic decisions that have to be made here that are
24 policy decisions. They're not just implementation. And
25 if our thoughts about governance here are all based on

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<p>1 how we're going to implement something that's already 2 been decided, we're not there yet. 3 CHAIRMAN MADIGAN: Okay. Mike. 4 MR. SHAVER: Under the first point of 5 principles for interim implementation, I would like to 6 comment that there should be a bullet for tribal 7 involvement. 8 CHAIRMAN MADIGAN: Put that back up. 9 MR. SHAVER: What was that? 10 CHAIRMAN MADIGAN: I said I'll put it back up. 11 MR. SHAVER: Oh, okay. And my comment there on 12 tribal involvement should be more than just the context 13 of tribes in the sense of consultation if there's 14 program activities they are concerned about commenting 15 on. It should not be also inclusive or be the -- or to 16 meet the need of having tribes included in the members 17 of any decision making policy groups. 18 CHAIRMAN MADIGAN: Questions? Okay. All 19 right. Bob. 20 MR. RAAB: Kate, I thought that some -- we were 21 discussing at the last governance meeting something 22 about oversight. I still feel that, under principles 23 for both interim and long-term governance of that, 24 oversight deserves a bullet under the principle section. 25 MS. HANSEL: Can you describe a little more</p> <p style="text-align: right;">Page 226</p>	<p>1 outside the policy group as well as government agencies. 2 MS. HANSEL: Right. 3 MR. RAAB: And so forth. 4 MS. HANSEL: Okay. 5 CHAIRMAN MADIGAN: Kate, help me with what 6 you're thinking about in terms of public participation, 7 given the fact that we're not really contemplating the 8 continuance of BDAC. What are the notions that are 9 floating around here? 10 MS. HANSEL: Well, you could start with, I 11 guess, that's the next topic then put in front of you. 12 That's overhead eight, I guess. 13 CHAIRMAN MADIGAN: Great. 14 MS. HANSEL: We have been doing some thinking 15 about the future of BDAC and the future of a advisory 16 group like this that has a similar function, only 17 turning into the implementation phase. So I wanted to 18 do a little description on what that thinking is that 19 deals with a broad public advisory board and it deals 20 with focused work groups. 21 CHAIRMAN MADIGAN: Okay. 22 MS. HANSEL: But the question is, should we 23 have both broad public advisory group and focused groups 24 in the interim, and possibly after that, or should we 25 just have focused public work groups. Okay? So I'm</p> <p style="text-align: right;">Page 228</p>
<p>1 what you mean? That the role of policy group would be 2 oversight? Or who would oversee what? 3 MR. RAAB: I think you get into -- you 4 mentioned public involvement and local involvement. 5 They both are explicit about getting public 6 opportunities to speak to issues. But there's nothing 7 in the principles that, to my mind, resolves or is a 8 strong tool for taking valid questions about the way, 9 let's say, the Bay-Delta program is going. There's no 10 tool there that says this is -- this is what the 11 Bay-Delta program should be thinking about doing in a 12 way of adaptive management. In other words, a voice 13 outside the loop. 14 MS. HANSEL: Well, it might be something we 15 could do through the -- I mean, we've often used the 16 independent science review as one outside review. And I 17 have science integration which could -- I could 18 incorporate something more in that. I see the oversight 19 in the program direction for the CALFED program and the 20 assessment of the CALFED program in the policy groups. 21 When we list responsibilities, we have to list that as 22 the policy group's responsibility with input from 23 outside independent folks. 24 MR. RAAB: Well, I guess that's what I'm really 25 getting at. I keep saying outside the loop. I mean</p> <p style="text-align: right;">Page 227</p>	<p>1 going to return to that question. Let me describe some 2 of the thinking of those two approaches to advisory 3 groups. And, again, this is attachment B and C in your 4 packet. 5 Broad public advisory group. Basically, BDAC 6 has had a lot of accomplishments and advised the program 7 in a lot of areas in phase one and phase two. It's a 8 similar thinking here that this would be an umbrella 9 group that would serve as an umbrella group for the 10 other chartered advisory groups, maybe one FACA 11 charter. But it would be the one group, a new group, 12 that would have overall program direction and progress 13 as one of its topics. If you rely just on focused topic 14 groups or regional groups, no one is advising on the 15 large picture. And what we're thinking here is, in the 16 interim, we have policy group. It's all agencies. If 17 we rely just on a Delta Drinking Water Council and a 18 roundtable, then who is sitting next the policy group 19 when they're trying to do overall program assessment and 20 integration. And is it just public members coming up to 21 the podium, or who is sitting at the table. So I see 22 that the ROD public advisory group would be sitting at 23 the table with policy group and would be transitioning 24 into what we set up as the long-term governance 25 structure, where it would be stakeholders, public,</p> <p style="text-align: right;">Page 229</p>

1 tribes, and agencies, all decision makers, and this
2 would be the lead-in to that. So keeping that role.
3 But the difference here would be the membership
4 would be smaller. That would be the goal. And
5 representation would be chosen for the folks that
6 have -- are representing broad constituent groups. And
7 as people have come up and talked to me about how we
8 select representatives on our commission, and we have
9 asked the tribes, well, you have so many tribes, how
10 should we -- how do you put all the tribes on. And they
11 have come up with some really good ideas about how you
12 can find a couple members to have broad representation
13 of the tribes. It's the same concept we should apply to
14 a new advisory group. Every member that sits there, how
15 are they representing or bringing broad interests to the
16 table. And high level representatives, just like
17 we're -- like BDAC is demanding that agencies be at a
18 high level, I think the advisory members have to be at a
19 high level in the organization, too, for the same
20 reason.
21 So all those things weigh into the membership.
22 Similar to where BDAC is now, and recently, is that this
23 new group would meet with the policy group and
24 separately. So that's kind of our vision of a ROD
25 public advisory group. The staff recommendation that I

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1 took to BDAC to our work group is that we have both a
2 broad public advisory group, we continue that for the
3 interim, and we have focused work groups. The work
4 group did not make a recommendation. I think we ran out
5 of time. But they wanted to bring both options to BDAC
6 today.

7 So I'll go to the next one and describe what
8 we're thinking of with these focused groups. The main
9 difference here is we've had focus groups on topics. We
10 haven't had focus groups on regions. So the idea here
11 is you do both. And we've been getting a lot of
12 comments that we need to have local involvement,
13 community based involvement, and I think that this is
14 one way to do it. And so this would start the thinking.
15 They target -- we have groups that are both targeted at
16 specific regions and at topics. So we would continue
17 the Drinking Water Council, the Ecosystem Roundtable,
18 and other topics.

19 The local groups would be -- consist of members
20 from the local area, and obviously, the topic specific,
21 program specific groups would have technical or policy
22 expertise in that subject area. So there would be both
23 subject and geographic groups.

24 So that's the idea for these focused public
25 advisory groups. So, again, what I'm asking of BDAC

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1 today is what's your sense on what's needed for public
2 involvement in terms of advisory groups in the interim,
3 given that BDAC's tasks, as the current charter
4 describes, ends with the, you know, recommendations on
5 the preferred program alternative and implementation.
6 It's one of your final tasks that you were working on
7 today.

8 CHAIRMAN MADIGAN: Okay. Roberta.

9 MS. BORGONOVO: I guess my question is, when
10 you look at the interim, basically, you really -- it's
11 like -- I don't know if I -- I wouldn't call it BDAC
12 light, but it's a small group. It's 10s, instead of 32
13 or 36. They are meeting with the policy group, so
14 they're always at the table. And I'm assuming that they
15 are different from the focused public advisory groups.
16 So you have -- you would have the ten members there that
17 are representative of different interests, and then you
18 would continue to have these advisor groups that are
19 already there. There are a lot of different groups that
20 are working in different program areas. And what you
21 are suggesting is that you would also have regional
22 advisory groups so you would begin to get this local
23 connection, local implementation.

24 MS. HANSEL: Right. Sounds pretty good to me.

25 CHAIRMAN MADIGAN: Hap.

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1 MR. DUNNING: I have mixed feelings about
2 having a smaller group. I think it would be highly
3 advantageous in working with the policy group, because
4 the full group can sit down each time with the policy
5 group and be much more integrated in their operations.
6 But I think we ought to recognize, given the long list
7 of interested constituencies that we're talking about, a
8 public advisory group that basically may have one person
9 from something like agriculture or urban or
10 environmental, and that, I think, does raise some
11 problems.

12 CHAIRMAN MADIGAN: Having been through this one
13 before, it is very difficult to find a representative
14 group of people who serve what almost anybody around
15 here could identify as two or three or five or six
16 constituencies. I participated naively in the notion
17 that the 18 or so people on BDOC, whatever that number
18 was, was 18, I think, yeah, was sufficient. In fact, it
19 wasn't even close in terms of breaking things down.

20 And, you know, I sometimes think of the Sac
21 valley. There are not many people who live in the Sac
22 valley. But the variety of interests within the Sac
23 valley is remarkable. There's area of origin, there's
24 urban, there's rural, there's ag, nonag, there's west
25 side of the valley, east side of the valley, different

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1 water issues, there are all the hierarchy of water
2 rights within the Sac valley. I mean, boy, you know,
3 you could sit there and you could peel that onion for
4 days. And to try to find eight or ten people around
5 this state who really reflect, in an advisory role -- I
6 mean, it's one thing to have an election and elect a
7 governor or something like that, 55/45, or 58/42, or
8 whatever the vote turns out to be, but when you're
9 looking for the breadth of comment that I think an
10 advisory group would genuinely do, I wish you luck in
11 getting you a small number.

12 MR. DUNNING: And our -- if I can just add to
13 that, our experience has been that even with a large
14 group that we had, we didn't have enough. We started
15 out without tribal representation, without environmental
16 justice representation, without the rural counties.
17 Those people all were added.

18 CHAIRMAN MADIGAN: Absolutely. Without a
19 doubt. And to this day, get comments that are our group
20 is not represented in yours. Excuse me. Fran.

21 MS. SPIVY-WEBER: I know that this is -- this
22 is the first time I've really given much thought to
23 this, but it seems to me that if you are going to
24 have -- that having regional work groups as well as
25 issue-centered work groups is an extremely good idea.

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1 better lately, but not great. You can't have 30 some
2 odd people go over the policy group meeting, but you can
3 have representatives of the policy group show up at this
4 meeting. And they don't do that very often, and less so
5 over time. Frankly, we had more people from those
6 groups showing up in the early days than we have later
7 on. This is going to be a long, long effort over the
8 years. And to the extent that we have done better, a
9 big chunk of that, in my mind, has been because of
10 communication. And to the extent that we have done more
11 poorly, it has been because of lack of communication.
12 And so I would hope that there is a very close pattern
13 of participation, particularly on the part of whatever
14 the policy group looks like in the future with whatever
15 that advisory group looks like in the future.

16 Alex, and then Bob, and then Roberta.

17 MR. HILDEBRAND: Well, I agree with your
18 comments, Mike, on this topic. Even if you go to
19 regional, I'm not sure just what -- it depends on how
20 you define regional. I think some of the troubles we
21 have today are because we have focus groups on different
22 topics, and there's no integration of them. If we have
23 a focus group that figures out how to have better source
24 of water for the urbans, and then there's nobody that
25 looks at what's the consequence of that on in-channel

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1 And it would be useful if -- if, on a regular basis --
2 regular basis, representatives from those work groups,
3 regional and issue, got together. Now, I don't know if
4 that could be your substitute for the broad public
5 advisory group, but it might be an approach. Because
6 one of the things that I have found frustrating is that
7 if, you know, if you were a participant in BDAC, you
8 aren't necessarily a participant in some of the other
9 work groups. And you -- and unless you go to
10 extraordinary effort, you don't really know what is
11 going on there. You get reports for an hour or so here
12 at this meeting, but you don't truly understand the
13 depth of discussion that goes on at the expert level.
14 And same with regional interests. We rarely get a
15 very -- a good representation of regional concerns. We
16 do from the Delta, and we do from a few other places.
17 But today, we had a regional issue come up that was
18 quite surprising to us all. So I think that you might
19 consider, you know, bringing that group together in a
20 more formal way every so often, and that might solve
21 some of your problem of numbers.

22 CHAIRMAN MADIGAN: And let me offer another one
23 in terms of my frustrations around here over the years.
24 One of the things that I have felt we have done most
25 poorly is communicate with the policy group. It's been

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1 water quality, for example, in the Delta, there's a
2 disconnect there. And we've done a number of those
3 disconnects. And even with the big BDAC group, we
4 haven't been very good at taking care of those problems.
5 So I hate to think of any of us going on with this thing
6 forever, but I'm not sure how you avoid it.

7 CHAIRMAN MADIGAN: We're going to work on that.
8 Sunne.

9 VICE CHAIR McPEAK: I know how to avoid me not
10 continuing. I'm not. Mike and I have, you know, really
11 tried hard to get rid of BDAC, unsuccessfully. That is
12 when we say the continuation of this, and I'm -- and
13 we're not just expressing, you know, five years is
14 enough kind of notion. If Roberta wants -- I like the
15 notion that this new group being called BDAC light. I
16 want to be associated with BDAC heavy. And, you know,
17 let's get something done.

18 But here, there's not a perfect, you know,
19 organizational structure, and a lot of different
20 configurations can work. But I think what hasn't yet
21 been captured, and what was -- we were trying to
22 communicate in that memo last year, was that unless
23 there is recognized and articulated institutionalized
24 participation by stakeholders, it will occur de facto or
25 informally, and that that's still the strongest affinity

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60 (Pages 234 to 237)

1 and collection of interests for water policy in
2 California. And so to not address that, you know, right
3 up front and directly, and it still hasn't been in
4 either the commission or the -- whatever the advisory
5 group is. And by that, I mean, to just appoint various
6 people of various persons and assign -- I'm supposed to
7 represent the business interests, as an example. And I
8 try very hard to do that sincerely. But I didn't come
9 from the business caucus. I mean, we tried to put that,
10 if you will, a caucus together, and it's worked very
11 well.

12 I think there has to be accountability back to
13 the stakeholders, and that that should be built in in a
14 different way, is all I would just respectfully say,
15 even more grassroots than is usually thought of.

16 And then on work groups, they have to --
17 whether or not it's organized initially this way, it has
18 to be around problem solving, where you try to get, you
19 know, participation across those stakeholders.

20 CHAIRMAN MADIGAN: Right. Task force.

21 VICE CHAIR McPEAK: Right. I mean, the
22 negotiations have always happened in the back room or
23 among stakeholders.

24 CHAIRMAN MADIGAN: Bob.

25 MR. RAAB: Mike, I take to heart what you say

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1 about the size of the group. However, what's the
2 expectation? Is there going to be better information
3 coming out of 34 people, or would there be better
4 information coming out of an agenda that is focused on
5 certain key issues, and then members of smaller groups
6 are invited to be the public representatives at a given
7 meeting with a focused topic? I'm just saying I don't
8 know what the answer is, but I think there's more than
9 just what we see up there.

10 CHAIRMAN MADIGAN: All right. Roberta.

11 MS. BORGONOVO: I sympathize with Sunne. When
12 I said BDAC light, I thought about that. One of the
13 things, I guess, I don't want to see is this group
14 meeting over and over where basically we're separated
15 from the policy makers. So that's the advantage of the
16 ten. If you have the ten coming in, then are they --
17 they're ex officio, you would hope that they'd be part
18 of the discussion. But I really like Fran's idea.
19 Because when Kate began talking about this, she was
20 talking about -- Eugenia talked about it, too, how would
21 you make sure that the public members have the same kind
22 of information that the agency members have, the agency
23 people have, all the people underneath them. And if
24 what you had was you had a briefing for the ten and all
25 those other groups, you would begin to get it where Alex

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1 wants to go, which is you'd have them talking to each
2 other.

3 And if you -- I also have to agree with Bob. I
4 think you do have to focus and I think you have to have
5 one topic and spend enough time on it that you can get
6 through it. But if you had that kind of a structure, I
7 think you would begin to get this kind of broad
8 participation that many of us think is absolutely
9 necessary if CALFED is going to move forward.

10 CHAIRMAN MADIGAN: Sunne.

11 VICE CHAIR McPEAK: I want to try just one more
12 time to discuss a possible approach on the governance
13 that incorporates the need to involve stakeholders and
14 recognizes that an advisory group that is smaller than
15 what we've got here isn't going to be representative.
16 And, in fact, this falls short of being as effective an
17 advisory mechanism as is needed. That's the point that
18 we were trying to make, that this is -- it has to be
19 pretty large to bring in all the interests. But even
20 this is not stakeholder based. We represent, in theory,
21 stakeholders. And so it requires a larger group of
22 folks, actually, I think, to be involved in an effective
23 advisory and governance process.

24 So the concept that we threw on the table was
25 what if there is actually, in the governance structure,

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1 a way in which stakeholders declare themselves and are
2 recognized by the policy group or by CALFED. And it's
3 really grassroots up. Maybe you get to that ten or so,
4 but there is a real accountability back, and that it's
5 not a separate advisory group, but folks on that
6 commission that aren't politically appointed, if you
7 will, appointed by -- just chosen, but actually come to
8 the governance structure through a broader based
9 stakeholder rooted process. That's much different than
10 you usually see. But it is a trying to get explicit and
11 transparent, what actually does happen, de facto, to
12 reach decisions.

13 CHAIRMAN MADIGAN: Mike.

14 MS. SPIVY-WEBER: Explain how that would work.

15 VICE CHAIR McPEAK: Well, let's, for example,
16 be -- the environmental organizations collect themselves
17 and say, we hereby identify ourselves as the
18 environmental caucus, here is who we are, we take
19 responsibility, report back to these constituents, we
20 want to be formally recognized, and we nominate Fran,
21 Hap, and Roberta to be considered for the commission.

22 MS. BORGONOVO: Whoever is there at the end of
23 the day, is that how it works?

24 VICE CHAIR McPEAK: Well, whoever is willing to
25 continue. But I'm saying, you know, almost a nomination

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1 process up. Because there probably -- the elected
2 officials are going to want to have the final say of who
3 do they put onto a governance body. I'm trying to
4 actually cut out the -- this notion of advisory from
5 political appointments, recognizing that what we've said
6 is that the agencies who are implementors have to be
7 there at the highest level.
8 CHAIRMAN MADIGAN: And that stakeholder
9 activity has been proven around here to be most
10 effective from the bottom up.
11 VICE CHAIR McPEAK: Exactly. And so to try to
12 marry that. So then EZE and I and others might say, we
13 hereby are the business caucus in California, Steve,
14 whatever. Presumably, we say that with some portfolio,
15 so some accountability. And we represent these people,
16 and we want to nominate Steve, EZE, and Tom Decker to be
17 considered. You know, Torri and Martha collect
18 themselves together and say we're the social equity
19 caucus, and here we are, and we represent these folks,
20 and here's our nominees. I mean, just to carry it on.
21 But if you come forward, it's a pretty good indication
22 that you're interested, because you're going to come
23 forward and assert yourself into the process anyway,
24 some way or another, if you're interested. And it then
25 starts putting into a pool of candidates to be

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1 considered, not for an advisory body, but for that
2 commission, folks who are stakeholder based.
3 MS. BORGONOVO: To be decision makers, part of
4 the policy makers, yeah.
5 VICE CHAIR McPEAK: And then you have,
6 obviously, those folks who sit on the -- that sit on
7 such a commission, governing body, would -- would
8 regularly report back. And that, too, needs to be
9 articulated and formalized. You don't just allow those
10 who are on the commission to go their own ways, because
11 that -- there often is a disconnect. So you have a
12 larger body, and it's from that larger group of declared
13 stakeholders that you pull all these work groups,
14 however you want to organize it.
15 CHAIRMAN MADIGAN: Mike.
16 MR. SHAVER: I would like to associate myself
17 with Sunne's comments, that these decision making
18 members should not be appointed by the federal and state
19 governments. I believe the tribal governments would
20 want and need to meet amongst themselves in a tribal
21 caucus and make the decision on who would be
22 representing the tribes. They would have great
23 difficulty having that be appointed by the Department of
24 Interior or by the governor of the state.
25 And then secondly, I believe the nature of our

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1 goal of coordination on these activities requires to
2 have a large number of constituents being involved.
3 Just in the State of California there is 105 tribes.
4 And there's many other -- the same problems with other
5 interest areas. So I think that we would just have to
6 deal with trying to get large numbers on some bodies,
7 and narrowing that down to have more efficient bodies at
8 certain parts of the process.
9 CHAIRMAN MADIGAN: Okay. Yeah, Torri.
10 MR. ESTRADA: I think it's a really good idea.
11 It's something actually we've done.
12 But just two issues to throw out. The first
13 one is how you choose who represents what stakeholders,
14 what's the universe of that, and what happens if you
15 have competing interests.
16 The other thing, coming from environmental
17 justice perspective in terms of the responsibility and
18 accountability is, one, of organization and, two, of
19 capacity. And with a FACA group, and it raises some
20 issues about, you know, what resources can come to
21 actually empower those groups to do that. And so I
22 don't know what the appropriate structure is to get
23 around some of the barriers to participation on such a
24 group, but I think those are real issues. But I think
25 it's a good idea.

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1 CHAIRMAN MADIGAN: Okay. Okay.
2 MS. HANSEL: Great. Thanks for the comments.
3 CHAIRMAN MADIGAN: All right. Thank you.
4 Anybody from the audience? I don't have any cards on
5 this issue, but -- oh, Eric. I'm sorry.
6 MR. HASSELTINE: I just -- we got off the
7 preamble and the discussion of the whole preferred
8 program alternative before I had a chance to make one
9 other comment.
10 CHAIRMAN MADIGAN: Yes. Hap. I'm sorry. Hang
11 onto that.
12 MR. DUNNING: Is that attachment C on the
13 governance? I thought we hadn't gotten attachment C
14 yet?
15 CHAIRMAN MADIGAN: Kate, did you want to --
16 MS. HANSEL: Oh, I'm sorry.
17 CHAIRMAN MADIGAN: -- talk about attachments?
18 MR. DUNNING: What about attachment C?
19 MS. HANSEL: That's just for your information.
20 We decided we had better describe the current process so
21 we have current interim.
22 MR. DUNNING: So that doesn't need to be
23 discussed.
24 MS. HANSEL: Unless you wanted to.
25 CHAIRMAN MADIGAN: Okay. All right. Eric.

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<p>1 MR. HASSELTINE: Well, now, we've discussed 2 governance now, and in some way we've discussed 3 governance has entered into, and assurances have entered 4 into our comments this morning about the program 5 alternative. I'm mystified as to where the heck we are 6 on finance. You know, we've gone all day long to talk 7 about the whole program, and it's only been mentioned 8 once by Hap and -- 9 VICE CHAIR McPEAK: I responded. 10 MR. HASSELTINE: You did, too? 11 VICE CHAIR McPEAK: Yeah. 12 MR. HASSELTINE: Oh, okay. Well, I must have 13 missed that. Am I missing where we are on that? 14 CHAIRMAN MADIGAN: No. We'll get back to you 15 on that one. 16 VICE CHAIR McPEAK: Beneficiaries pay. That's 17 where we're at. 18 CHAIRMAN MADIGAN: Yeah. Really. No kidding. 19 Okay. Listen. You guys have been terrific. This has 20 been a long day. We actually got a lot more done than I 21 thought we were going to get done, and I congratulate 22 you for your efforts in that regard. We're going to 23 meet on the 1st of June. We'll still keep that date. 24 But we are going to try to find a date in advance of 25 that to get back together and review the work that</p> <p style="text-align: right;">Page 246</p>	<p>1 2 3 4 5 6 7 I, MANDY M. GALARSA, a Certified Shorthand 8 Reporter in and for the State of California, do hereby 9 certify that the above and foregoing contain a true and 10 correct transcription of all proceedings, all of which 11 occurred and were reported by me. 12 WITNESS MY HAND AND SEAL, this the 20th day of 13 April, 2000. 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 248</p>
<p>1 Eugenia and Steve and Sunne and I will do over the next 2 week or so. Thank you-all very much. We are out of 3 here. 4 (The meeting adjourned at 4:01 p.m.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 247</p>	

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